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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1929

## No. 336

J. DU PRATT WHITE, FRANKLIN W. HOPKINS, EDWARD J. PARTRIDGE, ET AL., APPELLANTS,

*vs.*

SPARKILL REALTY CORPORATION AND STANDARD TRAP ROCK CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 21, 1929

(34,467)

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**IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK**

In Equity

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SPARKILL REALTY CORPORATION and STANDARD TRAP ROCK Corporation, Plaintiffs,

against

J. DU PRATT WHITE, FRANKLIN W. HOPKINS, EDWARD J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker, and Frederick H. Osborn, Constituting the Board of Commissioners of the Palisades Interstate Park; Hamilton Ward, as Attorney General of the State of New York, and Alexander Macdonald, as Commissioner of the Conservation Department of the State of New York, Defendants

ORDER TO SHOW CAUSE

Plaintiffs having presented an application for a temporary restraining order and an interlocutory injunction herein and the papers submitted in support of the application having been filed and sufficient cause appearing, it is

Ordered that the application of the plaintiffs for an interlocutory injunction be heard before a court constituted in the manner prescribed by section 266 of the Judicial Code of the United States of America on the 6th day of April, 1929, at 10 o'clock in the forenoon of that day at the room of the Circuit Court of Appeals in the Courthouse in the Post Office Building in the Borough of Manhattan, in the [fol. 7] city and state of New York; and the defendants and each of them at such time and place show cause why an in-

terlocutory injunction should not issue herein enjoining and restraining the defendants and each of them and each of their officers, agents, servants and employees, their successors in office and any and every person acting or purporting to act under or by virtue of the provisions of chapter 242 of the Laws of 1928 of the State of New York or any description, certificate or notice purporting to be made thereunder, from continuing in possession of plaintiffs' property described in the bill of complaint or in any way enforcing or attempting to enforce the provisions of said act, description, certificate or notice against plaintiffs or from proceeding by law or in equity, by summons, writ, petition or otherwise for the purpose of compelling compliance with said act, description, certificate or notice and granting plaintiffs such other, further or different relief as may seem meet and the nature of the suit require, and being of opinion from specific facts shown by affidavits and by the verified bill that immediate and irreparable loss or damage will result to the applicants before the matter can be heard on notice unless a temporary restraining order is granted, it is

Further ordered that, pending the return of this order and the hearing and determination of the plaintiffs' application and the entry of a further order herein, the defendants and each of them and their officers, agents, servants and employees, their successors in office and any and every person acting or purporting to act under or by virtue of the provisions of said act of the Legislature of the state of New York, or any description, certificate or notice purporting to have been made thereunder with reference to property of the plaintiffs described in the bill of complaint and particularly a description, certificate and notice dated October 10, 1928, are restrained from in any way changing the nature of, altering or destroying said property; and it is

[fol. 8] Further ordered that a copy of this order be served at least 10 days before the return day herein upon the Honorable Franklin D. Roosevelt, Governor of the State of New York, the Honorable Hamilton Ward, Attorney General of the State of New York, upon at least one of the other defendants constituting the Board of Commissioners of the Palisades Interstate Park, and upon Alex-

ander Macdonald, Commissioner of the Conservation Department of the State of New York; and it is

Further ordered that any answering affidavits of the defendants be served upon the solicitors for the plaintiffs at least five days before the date hereinbefore specified as the return day of this application and that any affidavit of the plaintiffs in reply thereto be served upon the solicitors for the defendants at least two days before the day of the argument of this application.

Plff. to give bond of $250 conditioned as per statute.

Dated, New York, March 19th, 1929.

Julian W. Mack, United States Circuit Judge.

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[fol. 9] In United States District Court

[Title omitted]

Bill of Complaint

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Sparkill Realty Corporation and Standard Trap Rock Corporation, corporations organized under and by virtue of the laws of the State of New York, having their places of business in the Borough of Manhattan, City of New York, bring this bill against J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker and Frederick H. Osborn, constituting the Board of Commissioners of the Palisades Interstate Park, Hamilton Ward, as Attorney [fol. 10] General of the State of New York, and Alexander Macdonald as Commissioner of the Conservation Department of the State of New York, and thereupon plaintiffs allege and complain:

First. Plaintiff, Sparkill Realty Corporation is a corporation organized under and pursuant to the Corporations Law of the State of New York, on the 6th day of February, 1914.

Second. Plaintiff, Standard Trap Rock Corporation, is a corporation organized under and pursuant to the Stock

Corporations Law of the State of New York, on the 17th day of May, 1927.

Third. Defendants, J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker and Frederick H. Osborn, constitute and are acting as the Board of Commissioners of the Palisades Interstate Park Commission, having been duly ap-ointed under and pursuant to chapter 242 of the Laws of 1928 which, as amended, prescribes the powers and duties of the Commission.

Fourth. Defendants, Frederick C. Sutro, Franklin W. Hopkins, George T. Smith and William Childs are citizens of and reside in the State of New Jersey, and defendants, J. Du Pratt White, Edward J. Partridge, George W. Perkins, Jr., W. Averell Harriman and Frederick H. Osborn are citizens of and reside in the State of New York, and at least one of these defendants resides within the Southern District of New York.

Fifth. Defendant, Hamilton Ward, is Attorney General and a citizen of the State of New York and resides in the City of Buffalo, New York.

Sixth. Defendant, Alexander Macdonald, is the Commissioner of the Conservation Department and a citizen of the [fol. 11] State of New York and resides in St. Regis Falls, New York.

Seventh. On May 19, 1927, and at all times hereafter, Sparkill Realty Corporation has been the owner in fee simple of the premises described in the schedule attached to Exhibit A, hereto annexed and made a part hereof, situated at Piermont, in the town of Orangetown, County of Rockland, State of New York, within the Southern District of New York, consisting of meadow lands and lands to the top of the cliff containing a deposit of rock known as "trap rock" of great value.

Eighth. On April 13, 1927 Anderson Dana procured an option for a lease of the said property and a copy of the proposed lease as agreed upon was annexed to the option and said option assigned to Standard Trap Rock Corpora-

tion and on or about May 19, 1927, plaintiff, Sparkill Realty Corporation, leased the said property to plaintiff, Standard Trap Rock Corporation, by written agreement of lease, a copy of which is hereto annexed, marked "Exhibit A" and made a part hereof, and supplemental agreements, copies of which are hereto annexed, marked "Exhibit- B," "C" and "D," and made a part hereof.

Ninth. On or about May 7, 1927, defendants, Board of Commissioners of the Palisades Interstate Park, adopted a resolution, of which plaintiffs were notified on June 11, 1927, that all preliminary steps be taken toward the acquisition of the said property for the purpose of a State park, said notice being to the effect that the property to be acquired consisted of the meadow lands and the uplands to the top of the cliff.

Tenth. On October 18, 1927, plaintiffs were notified in writing by Messrs. Hughes, Rounds, Schurman & Dwight, attorneys for defendants, Board of Commissioners of the Palisades Interstate Park, to the effect that certain data, information and valuation filed October 14, 1927, by plaintiffs had been submitted to defendants, Board of Commis-[fol. 12] sioners of the Palisades Interstate Park, and that said defendants had requested said attorneys to notify plaintiffs that at a meeting of the Board held October 18, 1927, it had been decided and resolved by said defendants that their counsel be instructed to take no steps for the condemnation of the said property.

Eleventh. Said communication of October 18, 1927, was acknowledged by the attorneys for plaintiff, Standard Trap Rock Corporation, on October 18, 1927, in a letter stating that plaintiff, Standard Trap Rock Corporation, was accordingly proceeding with the plans which it had made for the development of the property as a quarry and which had been in abeyance since receipt of the aforesaid notice from defendants, Board of Commissioners of Palisades Interstate Park, dated May 7, 1927.

Twelfth. Relying upon the assurance contained in the aforesaid communication of October 18, 1927, from the attorneys for the defendants, Board of Commissioners of Palisades Interstate Park, and in the belief that it was free to develop its property, plaintiff, Standard Trap Rock Cor-

poration, thereafter executed contracts for the erection and equipment of a plant on the said premises and for the manufacture and erection of equipment specially designed and built for use at this particular place and not adaptable for use elsewhere, thereby subjecting itself to liability in excess of one million ($1,000,000) dollars.

Thirteenth. Actual construction of the plant and installation of equipment by plaintiff, Standard Trap Rock Corporation, was commenced in the month of April, 1928, and would have been completed and the plant in operation on or about December 1, 1928, but for the subsequent unlawful conduct of defendants, Board of Commissioners of Palisades Interstate Park, hereinafter described.

Fourteenth. On or about September 29, 1928, the Honorable Alfred E. Smith, Governor of the State of New York, [fol. 13] the Honorable C. J. Hewitt, Chairman of the Finance Committee of the Senate, the Honorable Everly Hutchinson, Chairman of the Committee on the Ways and Means of the Assembly, defendants, Board of Commissioners of the Palisades Interstate Park, and the Conservation Department, Division of Parks, State Council of Parks of the State of New York, purporting to act under the provisions of section 4, chapter 16 of the Laws of 1926, and chapter 75 part 5, of the Laws of 1928 of the State of New York, approved estimates and maps covering a project for the acquisition of the said property hereinbefore described and appropriated for the acquisition of this and other property situated in the towns of Clarkstown and Orangetown, County of Rockland, State of New York, as shown on a certain key map attached to the memorandum of said action, the sum of six hundred thousand ($600,000) dollars, of which the sum of five hundred thousand ($500,000) dollars was allocated to the acquisition of plaintiff's property.

Fifteenth. On or about October 11, 1928, defendants, Board of Commissioners of Palisades Interstate Park, with the approval of the Honorable Alfred E. Smith, Governor of the State of New York, dated October 10, 1928, executed and served upon plaintiffs a notice that on October 11, 1928, there had been filed in the office of the Secretary of State of the State of New York a description of land, certified to be correct, upon which was endorsed a notice that the property

described therein, being the property of the plaintiffs hereinbefore described, had been appropriated by the People of the State of New York for public and state park purposes pursuant to chapter 242, of the Laws of 1928, and other applicable laws of the State of New York with the approval of the Governor.

Sixteenth. On or about October 11, 1928, and purporting to act under and by virtue of authority vested in them by chapter 242 of the Laws of 1928 of the State of New York and said notice dated October 10, 1928, defendants, Board of Commissioners of Palisades Interstate Park, wrongfully [fol. 14] entered upon the said real property of plaintiffs and converted the personal property thereon to their own use and have since remained in possession of said real and personal property and prevented its use, enjoyment, occupation and operation by plaintiffs for any purpose to plaintiffs' great and continuing damage.

Seventeenth. Section 4, Article VII of the Constitution of the State of New York forbids the creation of state debts save to meet casual deficits or for state defense unless authorized by statute submitted and approved by the people at a general election and only in accordance with such statute so approved. Chapter 602 of the Laws of 1924 provided for the creation of such a debt, a portion of the proceeds of which were made applicable to the Palisades Interstate Park, such moneys to be expended and lands acquired by the Commissioners of the Palisades Interstate Park Commission under the provisions of Chapter 170 of the Laws of 1900 as amended. Chapter 170 of the Laws of 1900 contained no provision for acquisition of lands by entry and appropriation. Chapter 602 of the laws of 1924 was subsequently approved at the general election held in November, 1924. Thereafter Chapter 170 of the Laws of 1900 was wholly repealed by Chapter 242 of the Laws of 1928 which enacted the legislation under which defendants, Board of Commissioners of Palisades Interstate Park, have assumed to act in entry and appropriation of plaintiffs' property. The attempted allocation of five hundred thousand ($500.-000) dollars to such acquisition of said property is therefore void and of no effect, and no sum whatever has been appropriated for the acquisition of plaintiffs' property by entry and appropriation.

Eighteenth. Section 21 of Article III of the Constitution of the State of New York provides that an appropriation act making a new appropriation or continuing or reviving an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied. The Referendum Act of 1924, Chapter 602, allocated three million five hundred thousand ($3,500,000) dollars for the acquisi- [fol. 15] tion of lands by the Board of Commissioners of the Palisades Interstate Park for park purposes. By Chapter 16 of the Laws of 1926, said monies were provided and made available for the purpose of acquiring, by the Palisades Interstate Park Commissioners, lands pursuant to Chapter 170 of the Laws of 1900 as amended. Chapter 75, part 5, of the Laws of 1928, purports to reappropriate the said sum, yet it fails to comply with the requirements of said section 21 of Article III of the Constitution of the State of New York in that it fails to specify the object to which the sum appropriated is to be applied. Therefore, Chapter 75, part 5, insofar as it attempted to reappropriate the monies allocated for such park purposes by the Referendum Act of 1924, is unconstitutional and void, and this fund described therein as the "State Park System Fund" is unavailable to the Commissioners of the Palisades Interstate Park as no legal reappropriation of said monies had been made by the Legislature and no payment had been made within two years next after the passage of the Appropriation Act of 1926, being Chapter 16 of Laws of 1926.

Nineteenth. The real property hereinbefore described and the said leasehold attempted to be acquired as aforesaid were and now are of a value greatly in excess of five hundred thousand ($500,000) dollars, the amount purported as aforesaid to have been appropriated for its acquisition, being of the value at present in excess of three million ($3,000,000) dollars.

Twentieth. Plaintiffs are daily suffering great loss from the continued unlawful occupation of their property, deterioration of buildings and machinery and impossibility of operation. The aggregate loss so incurred will amount to such sum that the damage would be irreparable and destructive of plaintiffs' property. Plaintiffs are therefore without adequate remedy at law for redress of the wrong to

which they and each of them have been and are being subjected.

Twenty-first. The authorized capital stock of pliantiff, Sparkill Realty Corporation, is $30,000 divided into 3,000 [fol. 16] shares of no par value, all of which shares have been issued and outstanding.

Twenty-second. The capital stock of plaintiff, Standard Trap Rock Corporation, is 10,000 shares of eight (8%) per cent preferred stock of $100 par value, of which 7,152 shares have been issued and outstanding, and 18,000 shares common stock of no par value, of which 15,152 shares have been issued and outstanding.

Twenty-third. The value of the plaintiffs' property and business involved in this action greatly exceeds the sum of $3,000.

Twenty-fourth. To the end that plaintiffs may have that relief which they can obtain only in a court of equity and that defendants may answer the premises but not under oath or affirmation, the benefit whereof the plaintiffs hereby expressly waive, plaintiffs hereby respectfully pray:

1. That it be adjudged that Article XVI, section 745-760 of the Conservation Law of the State of New York, being part 9 of Chapter 242 of the Laws of 1928 of the State of New York, being an act entitled, "An Act to amend the Conservation Law, generally, and to conform the same to the State Departments Law and repealing certain provisions of Article VIII of the State Departments Law, and certain other statutes," which became a law March 5, 1928, and that a certain notice, description and certificate of defendants, Board of Commissioners of the Palisades Interstate Park Commission, dated October 11, 1928, with reference to the real and personal property hereinbefore described, and the acts of the defendants thereunder, are invalid as violative of the provisions of section 10 of Article I of the Constitution of the United States of America and of section 1, Articles XIV, of the Articles in addition to, and amendment of the Constitution of the United States of America and of section 6 of Article I and section 4 of Article VII of the Constitution of the State of New York.

2. That it be adjudged that Chapter 75, part 5, of the Laws of 1928, insofar as it relates to the "State Park Sys-
[fol. 17] tem Fund" and the reappropriation of $11,912,-850.58, is invalid as violative of the provisions of section 21, Article III, of the Constitution of the State of New York.

3. That it be adjudged and decreed that plaintiffs have no adequate remedy at law for the damage and injury which will result from the enforcement of said act, notice, certificate and description, and that the same will be irreparable.

4. That plaintiffs be granted a writ of injunction issued out of and under the seal of this Honorable Court against defendants forever restraining them and each of them, and each of their officers, agents, servants and employees, their successors in office and any and every person acting or purporting to act under or by virtue of said act of the Legislature of the State of New York or said notice, description or certificate of defendants, Board of Commissioners of Palisades Interstate Park, and from in any way enforcing or attempting to enforce the provisions of said act, notice, description or certificate against plaintiffs or from instituting or prosecuting any action or proceeding at law or in equity by summons, writ, petition, bill or otherwise for the purpose of compelling compliance with or inflicting or recovering any penalty, forfeiture or damage for non-compliance by plaintiffs with said act, notice, description or certificate or from continuing in possession of plaintiffs' said property.

5. That plaintiffs be granted a writ of subpœna ad respondendum issued out of and under the seal of this Honorable Court directed to the defendants commanding them and each of them on a day certain and under a certain penalty to be therein inserted to appear before this Honorable Court, and then and there full, true, direct, and perfect answer make to all and singular the premises and further to stand, do, perform and abide by such further order and decree as to this Honorable Court may seem meet.

6. That plaintiffs may have such other, further or different relief as may seem meet and the nature of this

[fol. 18] suit and equity may require and grant, together with costs and disbursements of this suit, and the plaintiffs will ever pray.

Sparkill Realty Corporation, by John Otto, President. Standard Trap Rock Corporation, by James G. Shaw, Vice-President. Henry J. Hemmens, Solicitor for Plaintiff Sparkill Realty Corporation. Office and P. O. Address: 43 Cedar Street, Borough of Manhattan, City of New York. Timothy J. Shea, of the Firm of Cullen and Dykman. Cullen and Dykman, Solicitors for Plaintiff Standard Trap Rock Corporation. Office and P. O. Address: 177 Montague Street, Borough of Brooklyn, City of New York. Henry J. Hemmens, Jackson A. Dykman, Timothy J. Shea, of Counsel.

[fols. 19 & 20] *Duly sworn to by John Otto and James G. Shaw. Jurat omitted in printing.*

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[fol. 21] EXHIBIT A TO BILL OF COMPLAINT

Agreement, made this 19th day of May, 1927, between Sparkill Realty Corporation, a New York Corporation, having an office at 17 West 44th Street, in the City of New York, first party, and Standard Trap Rock Corporation, a New York Corporation, having an office at No. 26 Cortlandt Street, in the City of New York, second party,

Witnesseth:

That the first party in consideration of the issuance to it of a certificate for 2,000 shares of the common stock of the second party (receipt of which is acknowledged) and in further consideration of the covenants and agreements of the second party herein expressed hereby leases to the second party and the second party hereby hires from the first party all that certain tract of land at Sparkill in Rockland County in the State of New York owned by the first party and more fully described in the attached Exhibit A for the purpose of mining, quarrying and removing trap rock therefrom and with the right and privilege to construct, make, operate and maintain all such buildings, excavations, openings, ditches, drains, railroads,

canals, wagon-roads, crushing plants and other improvements and workings upon said premises as the second party may from time to time deem necessary or suitable for the removal of trap rock therefrom.

To have and to hold said premises unto the second party and its successors and assigns for the uses and purposes aforesad during the period of twenty years from the 1st day of January 1928.

The parties hereto for themselves and their respective successors and assigns covenant and agree as follows:

First. The second party will pay to the first party a royalty on the basis and at the rates hereinafter provided but which shall in any event be not less than a minimum annual royalty of $35,000. The royalty shall be based upon the quantity of trap rock removed during each year and [fol. 22] shall be at the rates of seven cents per cubic yard up to and including 500,000 cubic yards and six cents per cubic yard on all over 500,000 cubic yards up to and including 600,000 cubic yards and five cents per cubic yard on all over 600,000 cubic yards.

The royalty shall be payable in quarterly instalments on or before the twentieth day of each April, July, October and January commencing April 20, 1928 and ending January 20, 1948. Each such quarterly instalment shall be based upon the quantity of trap rock removed during the three calendar months next preceding the month in which such instalment is so payable but shall in any event be not less than one-quarter of the minimum annual royalty. The first party acknowledges receipt on the signing of this agreement of $8,750 as full payment in advance of the quarterly instalment of the minimum royalty due April 20, 1928.

Whenever on any such quarterly payment date the instalment of royalty which would be then due if computed solely on the basis of trap rock removed during the preceding quarterly period shall be less than $8,750, the difference shall constitute a credit against (and may be deducted by the second party from) any amount by which the royalty for any one or more subsequent quarterly periods shall exceed the minimum royalty for such period or periods.

Second. Whenver used in this Agreement the word "year" means "calendar year" and the term "cubic yard" refers exclusively to measurement after crushing.

Third. The second party will build and equip a plant upon the premises of the capacity of not less than five hundred thousand (500,000) cubic yards per annum.

Fourth. Any riparian or wharfage rights in connection with the premises which the second party shall consider it necessary to lease shall be leased by the second party at its own expense and any such rights which the second party shall consider it necessary to purchase shall be paid for by the second party but title thereto shall be vested in the first party. Any such rights so vested in the first party [fol. 23] shall automatically become included in this lease and the first party will execute and deliver any such instrument supplemental hereto as shall be reasonably requested for the purpose of effecting that result.

Fifth. The second party will cause all trap rock removed from the premises to be measured (after crushing) by said second party or by the transportation company which removes the same, and will furnish the first party each month with a certificate or statement showing the amount of all such trap rock removed and transported during the preceding month. All such monthly statements shall be delivered or mailed to the first party at its address in New York City. The first party shall have the right on request and at reasonable hours to examine second party's books and records if deemed necessary to verify the same.

Sixth. The second party will pay all water bills, taxes and assessments, general and special, which may be levied or assessed against said premises or the improvements thereon, or any product thereof, or any personal property thereon, during the continuance of this lease, and before said taxes or assessments become delinquent, and will furnish the first party with duplicate tax receipts showing the payment of all such assessments and taxes; provided however that the second party shall have the right in its own name or in the name of the first party but at its own expense to contest in good faith and by appropriate proceedings any such assessment or tax and shall not be required

to pay any assessment or tax so contested until the final determination of such proceedings; and provided further that the amount of any refund which may be paid to the first party on account of any assessment or tax paid by the second party shall (after deducting therefrom any expense incurred by the first party in obtaining the same) be paid over to the second party.

Seventh. Unless of fire proof construction the plant and all machinery and buildings on the premises which are necessary to the conduct of the business are to be insured [fol. 24] and kept insured against fire by the second party and its successors and assigns, the loss if any being made payable to the first party, its successors or assigns. Whenever the amount of any loss paid to the first party under such insurance shall be less than $5,000 the first party will forthwith pay over the same to the second party. Whenever the amount of any loss so paid to the first party shall exceed $5,000 the first party will (unless otherwise mutually agreed between the parties hereto) forthwith deposit the same in escrow in the Fulton Trust Company in New York City or in such successor bank or trust company as shall be then continuing the business of the Fulton Trust Company. The escrow depositary shall dispose of such funds in the following manner:

(a) If within thirty days from the making of the escrow deposit the second party shall notify the depositary that the second party desires to repair or replace the property on account of which such loss was paid then the depositary shall thereafter from time to time pay over to the second party out of such deposit such amounts as the second party shall certify to the depositary as being due or as having been incurred for such repairs or replacements. Each such certificate is to be signed by two of the officers of the second party. If at the expiration of six months from the making of the escrow deposit there shall remain any balance thereof which the second party shall not have applied for as provided in this subdivision (a) then the depositary shall forthwith pay over such balance to the first party.

(b) If at the expiration of thirty days from the making of the escrow deposit the second party shall not have

given to the depositary the notice provided for above in (a) then the depositary shall forthwith pay over to the first party the amount of the escrow deposit.

Eighth. At the time of making each escrow deposit provided for above in Article Seventh the first party will sign and deliver to the depositary a letter of escrow instructions [fol. 25] which shall set forth an exact copy of Article Seventh and which shall otherwise be of substantially the following tenor:

"We herewith deposit with you in escrow the sum of $—, which represents the amount of fire insurance loss paid to us pursuant to the provisions of Article Seventh of an agreement dated April —, 1927, between the undersigned, as first party, and Standard Trap Rock Corporation, as second party. The property on account of which such loss was paid is ——

The following is an exact copy of Article Seventh of said agreement:

(Take in copy.)

We request you to hold and dispose of the escrow deposit as provided in the above quoted Article Seventh. The address of Standard Trap Rock Corporation is ——."

Nothing in this agreement contained shall in any way restrict the right of the second party to effect insurance for its sole benefit and protection upon all property on the premises (other than as specified above in Article Seventh) and against operating losses or loss of profits resulting from damage or destruction by fire or other means.

Ninth. Upon the termination of this lease, the second party shall quietly and peaceably surrender possession of said premises to the first party, but said second party shall have the right within six months thereafter, provided it has paid all royalty and rent due under the terms of this lease, and has otherwise performed all of the covenants and agreements herein expressed, to remove all fixtures and other property of every kind owned by it and placed or erected upon said premises.

Tenth. The first party and its assigns shall at all times have, possess and hold a lien upon all machinery, imple-

ments and personal chattels and buildings and sheds of the second party that shall be upon said premises as security [fol. 26] for the faithful preformance and discharge of all agreements, covenants and conditions herein contained, binding upon the second party, and for the payment of rents, royalties and taxes herein mentioned, and for any money that may be in any manner due or owing from the second party to the first party, and if default be made in the payment of any such rent, royalty, taxes or any moneys or any part of any instalment thereof, or in the performance or discharge of any of the agreements, covenants or conditions herein contained, the first party is hereby authorized to enter upon said premises and into, upon any place where said machinery, implements and personal property may be, and take the same into its possession, and to sell and dispose of the same at public sale in the manner provided by law for sales of pledged property or under chattel mortgage, and out of the moneys arising from such sale, to retain the sum or sums due, whether for damages or otherwise, together with interest thereon, and all costs and expenses of such sale, rendering the surplus, if any, to the second party.

Eleventh. The first party expressly reserves the right, by its duly authorized agents, to enter into and upon the above described premises, and every portion thereof, at any and all times for the purpose of inspecting and surveying the same and measuring the quantity of trap rock that shall have been removed therefrom, not unnecessarily or unreasonably hindering or interruping the lawful operations of the second party.

Twelfth. If the rent or royalty herein provided for, or any taxes or assessments, or any part thereof, shall remain unpaid after the dates and times herein specified, or in case the second party shall fail to keep or perform any of the covenants and conditions herein expressed by it to be kept or performed, and if such non-payment of rent or royalties, or other default hereunder, shall continue for thirty (30) days after the first party shall have given the second party written notice thereof, specifying its nature, then and from thenceforth and in either of such cases, it shall be lawful for [fol. 27] the first party to declare this lease terminated and the rights of the second party hereunder forfeited, to take

possession of the leased premises, or any part thereof, and without any process whatever, to re-enter said lands and premises and to possess again, as fully and completely as though this lease had not been executed, and the second party and all persons and parties claiming under it to wholly exclude therefrom.

Thirteenth. The second party may, at its option, renew this lease for a period of twenty (20) years from the expiration hereof, on the same terms and conditions, upon first giving to the first party not less than six (6) months' notice in writing, previous to the expiration of this lease, of its intention so to do.

Fourteenth. The second party shall not permit or suffer any unreasonable waste of trap rock upon said premises. Until the above mentioned plant shall have been completed and operated for the period of two years the second party shall not sublet or underlet the premises, or any part thereof, nor suffer any other person or persons to use or occupy the same, nor assign this lease, or any interest therein, except with the consent of the first party first obtained in writing.

Fifteenth. The second party may without any payment therefor, except as hereinafter provided, have possession of the premises during any portion of the period between the execution of this agreement and January 1st, 1928, for the purpose of constructing the plant to be erected thereon, and for the purpose of excavation and removing trap rock. For the privilege of such possession and uses the second party will pay to the first party the proportionate amount of all taxes and assessments as above provided for such preliminary period and will also pay to the first party on all trap rock removed from the premises during such preliminary period a royalty which shall be paid at the same times and computed in the same manner as hereinabove [fol. 28] provided except that there shall be no minimum royalty payable on account of such preliminary period.

Sixteenth. If the first party shall own at the time of the signing of this agreement or shall during the period of this lease acquire the tract of land designated as lot No. 35 on the map or plot referred to in Exhibit A such tract shall

thereupon be included in this lease. If at any time during the original or renewal term of this lease the second party shall desire to have included in this lease any tract or tracts of land adjoining the leased premises the second party shall so notify the first party and permit the first party to negotiate for the purchase thereof. If the first party shall be able to effect the purchase on terms acceptable to it and if the second party shall make available to the first party such advance payment on account of royalty hereunder as the first party shall require for its assistance in financing such purchase then the first party will effect such purchase and the lands so purchased shall forthwith become included in this lease to the same extent as though herein originally described. The first party will on request execute and deliver to the second party such supplemental instruments as may be reasonably requested for effecting the provisions of this Article Sixteenth.

Seventeenth. The first party warrants and covenants that it owns title to said premises in fee simple subject to no defects or liens or encumbrances whatsoever except as stated in Exhibit A and that the second party while not in default hereunder shall quietly enjoy said premises for the period and upon the terms and conditions hereinabove provided.

Eighteenth. The provisions of this agreement shall bind and benefit the respective successors and assigns of the parties hereto.

[fol. 29] In witness whereof, this agreement has been executed in duplicate by the parties hereto the day and year first above written.

Sparkill Realty Corporation, by John Otto, President. Attest: Walter Barnwell, Secretary. (Corporate Seal.) Standard Trap Rock Corporation, by W. Butler Duncan, President. Attest: Anderson Dana, Secretary. (Corporate Seal.)

[fol. 30] State of New York,
County of New York, ss:

On this 19th day of May, 1927, before me personally came John Otto to me known, who, being by me duly sworn, did depose and say that he resides in New York City, N. Y.;

that he is the President of the Sparkill Realty Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

John B. Purcell, Notary Public, New York County, No. 285. Register No. 9269. Bronx Register No. 2968. Kings Co. Register No. 9179. Queens Register No. 4104. Commission expires March 30, 1929. (Notarial Seal.)

[fol. 31] STATE OF NEW YORK,
County of New York, ss:

On this 19th day of April, 1927 before me personally came W. Butler Duncan, to me known, who, being by me duly sworn, did depose and say that he resides in New York City, N. Y., that he is the President of Standard Trap Rock Corporation the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

John B. Purcell, Notary Public, New York County, No. 285. Register No. 9269. Bronx Register No. 2968. Kings Co. Register No. 9179. Queens Register No. 4104. Commission expires March 30, 1929. (Notarial Seal.)

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[fol. 32] EXHIBIT A TO AGREEMENT

All those certain lots or parcels of land situate at Piermont, in the Town of Orangetown, County of Rockland and State of New York, and bounded and described as follows:

Beginning at the northwest corner of said parcel at the center of the public road leading to Rockland and running thence South 43½ degrees east 455 feet more or less to a stone set in the fence; thence South 39 degrees 15 minutes west 317 feet to land now or formerly of Rodman G. Moul-

ton; thence along the same as the fence now stands South 40 degrees east 38 feet; thence South 32 degrees east 279 feet; thence South 24 degrees east 175 feet more or less to land formerly of James Iserman, deceased; and southeasterly corner of said land of Rodman G. Moulton; thence along said Moulton's land about South 70 degrees west 16 chains 50 links to the center of the public road leading from Piermont to Rockland; thence along the center of said road South 14 degrees east about 5 chains 30 links; thence along said road South 15 degrees east 3 chains 21 links; thence along said road South 5 degrees west 2 chains and 88 links to a hickory tree; thence along said road South 19 degrees west 1 chain 91 links; thence North 77½ degrees east 18 chains 17 links to a stake on the east side of a small brook; thence South 30½ degrees east 4 chains 30 links to a stone wall; thence South 26½ degrees east 59 links; thence North 55 degrees east 808 feet 6 inches; thence North 20 degrees west 120 feet; thence North 52 degrees east 132 feet; thence South 35 degrees 30 minutes east along the land now or formerly of George A. Jones 904 feet to a cedar tree; thence North 17 degrees west 1,000 feet; thence North 30 degrees west 566 feet to the south side of a spring on land of David Holzworth; thence South 66 degrees west 460 feet; thence North 29 degrees west 90 feet 6 inches to a hickory tree at [fol. 33] the northwest corner of said Holzworth's land; thence North 46¾ degrees east 7 chains 5 links; thence North 19 degrees east 1 chain 56 links; thence North 14¼ degrees east 1 chain 97 links; thence North 22 degrees west 2 chains 10 links; thence North 7 degrees east 5 chains 80 links; thence North 10½ degrees east 4 chains 61 links; thence North 80 degrees east 80 links; thence North 10 degrees west to the Corner Kill; thence along same easterly, southerly and easterly to a meadow late of James C. Smith; thence along the same North 8½ degrees west about 10 chains 65 links to a meadow now or late of Tunis A. Smith; thence North 87 degrees east 2 chains 15 links to a ditch; thence North 10½ degrees west 7 chains 15 links to the Sloat Creek; thence South 39 degrees west 1 chain 59 links; thence South 64¾ degrees west 63 links; thence North 89 degrees west 62 links; thence North 64½ degrees west 77 links to a ditch; thence North 13½ degrees west 2 chains and 68 links; thence North 23 degrees west 2 chains; thence North 53 degrees west 60 links; thence South 80 degrees

west 2 chains 46 links; thence South 59 degrees west 52 links; thence South 32 degrees west 1 chain 37 links; thence South 24 degrees west 88 links; thence South 37 degrees west 1 chain 67 links; thence South 49½ degrees west 1 chain 93 links to a stake at the South side of Sloat or Sparkill Creek east of the lowest bridge and at the east side of a mouth or a ditch leading into the said Sparkill; thence South 69 degrees west along the said Sparkill Creek 5 chains 40 links; thence South 43 degrees east 7 chains 50 links to a stake in a stone heap; thence South 44¼ degrees west 12 chains 36 links to the westerly line of land now or formerly of Charles Taulman's; thence along the westerly line of land last mentioned North 49¼ degrees and west to land now or formerly of William Lawrence; thence South 33 degrees west 1 chain 43 links; thence South 40 degrees west 1 chain 45 links to the school lot; thence along the boundary line of the said school lot to the centre of the public road aforesaid; thence along the centre of [fol. 34] said road to the place of beginning. Containing 104 acres and 25/100 of an acre, excepting from the said premises above described a small lot on the Rockland Public road belonging to Maria Briggs; being in dimensions 70 links front and rear by 3 chains 15 links deep.

Also beginning at a stake by the land formerly of Jacob Ackerson and running thence North 25 degrees west 5 chains 35 links to land now or late of James T. Blauvelt, thence North 28 degrees west 6 chains, thence North 17½ degrees west 5 chains 58 links to a stake on line between lands now or formerly of James A. Hopson and Jacob M. Blauvelt; thence along said line South 78 degrees 45 minutes west 815 feet 5½ inches; thence North 18 degrees 30 minutes west 335 8/10 feet to land now or formerly of George A. Jones; thence North 78 degrees 45 minutes east 1,177 feet 5½ inches to the foot of the hill near the spring; thence in a southeasterly direction to a ditch near the foot of the hill; thence along the said ditch South 19 degrees east to a stake 1 chain 6 links in a northerly direction from the southwesterly corner of the salt meadow lot now or late belonging to the heirs of Lawrence Briggs deceased; and thence in a straight line to the place of beginning. Containing 19 acres and 58/100 of an acre.

Also bounded on the east by land formerly of John L. Brownell, on the South by land now or formerly of Jacob

M. Blauvelt, on the west by an old stone ditch and on the north by land now or formerly of George A. Jones. Containing about 1⅓ acres.

Also all that certain piece, parcel or tract of land situate on the easterly side of Tallman's Mountain at or near Piermont, New York, in the Town of Orangetown, County of Rockland, and more particularly bounded and described as follows, viz: First, two acres more or less in Piermont, bounded, north, south and west by land of J. S. Homans and east by Elisha Ruckman against which the name of [fol. 35] "Mrs. Anna Doersch" appears on the assessment roll of said town for the year 1878, and the name "Mrs. Conrad Doersch" in the tax roll of said two of said years and on which a building known as the Lion Brewery was standing in the year 1878 and Second, one and seven tenths acres more or less at or near Piermont bounded, beginning at a hickory tree at the northwest corner thereof, adjoining the land of J. O. Gorham; thence south twenty-five (25) degrees thirty (30) minutes east ninety and one-half (90½) feet to a chestnut tree at the southwest corner thereof; thence north sixty-five (65) degrees east along said Gorham's land four hundred and sixty (460) feet to the Salt Meadows and other land of said Gorham; thence north twenty-seven (27) degrees forty-five minutes west along the same two hundred and thirty-two (232) feet and thence south forty-seven (47) degrees forty-five (45) minutes west along said Gorham's land four hundred and seventy (470) feet to the point or place of beginning. Against which the name of Anna Doersch appears on the tax roll for the year 1872.

Also the following meadow lots as shown on the map of the Orangetown salt meadow, made by James S. and James S. Harring, Jr., Surveyors, in October 1877, a copy of which map is filed in the Town Clerk's office in the town of Orangetown and also in the Comptroller's office in the State of New York, at Albany, as follows:

Lots in the Tappan tract of the Orangetown map: 1, 2, 5, 6, 7, 8, 16, 17, 18, 21, 22, 22a, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 45, 47, and 57.

The title to the upland was obtained through warranty deeds.

The title to the meadow lots was obtained from the Standard Oil Company, which Company got its title through tax

deeds. Some of these lots were obtained by the Sparkill Realty Company from Antoinette E. Wood.
[fol. 36] If the title to lot 35 in Tappan tract in the salt meadows is obtained by the Sparkill Realty Corporation, it will be leased or may be included in the lease about to be signed.

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EXHIBIT B TO BILL OF COMPLAINT

Supplemental agreement, made this 19th day of May, 1927, between Sparkill Realty Corporation, a New York Corporation, having an office at 17 West 44th Street, in the City of New York, first part, and Standard Trap Rock Corporation, a New York Corporation, having an office at 26 Cortlandt Street, in the City of New York, second party,

Witnesseth:

That in reliance upon the prior undertaking of the first party to execute and deliver this supplemental agreement second party has entered into and executed with the first party an agreement bearing even date herewith and hereinafter called the Lease.

Therefore the parties hereto for themselves and their respective successors and assigns covenant and agree as follows:

1. The provisions of paragraph first of the Lease are hereby modified in the following respects:

(a) If at any time prior to April 20, 1928 proceedings shall be commenced by the Palisades Park Commission for the condemnation of the leased premises or any substantial portion thereof then the minimum annual royalty provided for in the Lease shall not become effective unless and until such proceedings shall have been finally discontinued or finally terminated adversely to the said Park Commission and ten calendar months shall have elapsed subsequent to the month in which such final discontinuance or adverse termination occurred. Upon the expiration of such ten [fol. 37] months period the said minimum royalty shall become effective and the first instalment thereof shall be paid (less the advance payment of $500 hereinafter referred to) pro rata from the expiration of such ten months period to

the next succeeding quarterly payment date provided for in the Lease.

(b) The cash amount payable by the second party upon the signing of the Lease is hereby reduced from the full amount of the first quarterly instalment of said minimum royalty ($8,750) to a part payment of $500 on account of such first quarterly instalment receipt of which is hereby acknowledged by the first party.

2. Subject to the foregoing modifications all of the terms and provisions of the Lease shall remain in full force and effect.

In witness whereof the parties hereto have duly executed these presents the day and year first above written.

Sparkill Realty Corporation, by John Otto, President. Attest: —— ——, Secretary. (Seal.) Standard Trap Rock Corporation, by W. Butler Duncan, President. Attest: Anderson Dana, Secretary.

[fol. 38] State of New York,
County of New York, ss:

On this 19th day of May, 1927, before me personally came John Otto, to me known, who being by me duly sworn, did depose and say; that he resides in New York City, N. Y.; that he is the President of Sparkill Realty Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

John B. Purcell, Notary Public, New York County, No. 285. Register No. 9269. Bronx Register No. 2968. Kings Co. Register No. 9179. Queens Register No. 4104. Commission expires March 30, 1929. (Seal.)

[fol. 39] State of New York,
County of New York, ss:

On this 19th day of May, 1927 before me personally came W. Butler Duncan, to me known, who being by me

duly sworn, did depose and say; that he resides in New York City, N. Y.; that he is the President of Standard Trap Rock Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

John B. Purcell, Notary Public, New York County, No. 285. Register No. 9269. Bronx Register No. 2968. Kings Co. Register No. 9179. Queens Register No. 4104. Commission expires March 30, 1929. (Seal.)

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[fol. 40] EXHIBIT C TO BILL OF COMPLAINT

Second Supplemental Agreement, made October 19, 1927, between Sparkill Realty Corporation, a New York corporation, having an office at 17 West 44th Street, in the City of New York, first part, and Standard Trap Rock Corporation, a New York corporation, having an office at 26 Cortlandt Street, in the City of New York, second party:

Under date of May 19, 1927 the parties hereto entered into an agreement (hereinafter called the Lease) by which the first party leased its property at Sparkill in Rockland County in the State of New York to the second party for a term of twenty years from the first day of January, 1928, with permission to the second party to occupy and operate the property prior to January 1, 1928 and with the provision that the quarterly instalment ($8,750) of the minimum royalty due April 20, 1928 should be paid in advance upon the signing of the lease.

Simultaneously with the execution of the Lease and because of the fact that on April 13, 1927 counsel for the Palisades Park Commission had notified the first party that the Commission was considering the condemnation of the leased property, the parties hereto entered into a Supplemental Agreement dated May 19, 1927 by which it was provided among other things that if such condemnation proceedings should be commenced at any time prior to April 20, 1928 the minimum royalties provided for in the Lease

should not become effective until the expiration of ten calendar months subsequent to the final discontinuance or final termination of such proceedings adversely to the Commission, and that the amount to be paid by the second party on the signing of the Lease should be reduced to $500 as an instalment in advance on account of the first quarterly instalment of the minimum royalty.

Since the execution of the Lease and the Supplemental Agreement the parties hereto and their counsel have had continuous negotiations and correspondence with the Palisades Park Commission and its counsel and have by mutual [fol. 41] consent considered the action of the Commission as equivalent for purposes of the Lease and Supplemental Agreement to the institution of condemnation proceedings. On October 18, 1927 counsel for the Commission notified counsel for the parties hereto that the Commission had determined to take no steps for the condemnation of the property. The parties hereto recognize however that this notification was given too late to enable the second party to complete construction of the proposed plant in time to take advantage of the 1928 market.

Therefore in consideration of the premises and of the agreements hereinafter contained the parties hereto for themselves and their respective successors and assigns agree as follows:

1. The term or period of the Lease dated May 19, 1927 is hereby extended to twenty years from the first day of October 1928.

2. The second paragraph of Article First of the Lease is hereby modified to read as follows:

"The royalty shall be payable in quarterly instalments on or before the twentieth day of each January, April, July and October commencing January 20, 1929 except that the quarterly instalment ($8,750) of the minimum royalty due January 20, 1929 shall be paid in advance by the second party on or before February 1, 1928. The first party acknowledges and accepts the sum of $500 paid by the second party on the signing of this Lease as a payment in advance on account of the quarterly instalment so payable on or before February 1, 1928."

3. The first sentence of Article Fifteenth of the Lease is hereby modified to read as follows:

"The second party may without any payment therefor except as hereinafter provided have possession of the premises during any portion of the period between October 20, 1927 and October 1, 1928, for the purpose of constructing [fol. 42] the plant to be erected thereon and for the purpose of excavating and removing trap rock."

4. The Supplemental Agreement dated May 19, 1927 is hereby cancelled and is superseded by this Second Supplemental Agreement.

5. Subject to the foregoing modifications all of the terms and provisions of the Lease dated April 19, 1927 shall remain in full force and effect.

In witness whereof the parties thereto have duly executed these presents in duplicate the day and year first above written.

Sparkill Realty Corporation, by John Otto, President. Attest: Walter Barnwell, Secretary. (Seal.)
Standard Trap Rock Corporation, by W. B. Duncan, President. Attest: Anderson Dana, Secretary. (Seal.)

[fol. 43] State of New York,
County of New York, ss:

On this 28th day of October, 1927 before me personally came John Otto, to me known, who being by me duly sworn did depose and say that he resides in New York City; that he is the President of Sparkill Realty Corporation the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

L. S. Donaldson, Notary Public, Nassau County. Certificate filed in New York County. Clerk's No. 277. Register's No. 9228. Commission expires March 30, 1929.

State of New York,
County of New York, ss:

On this 25th day of October, 1927 before me personally came W. Butler Duncan, to me known, who being by me duly sworn did depose and say that he resides in New York City; that he is the President of Standard Trap Rock Corporation the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Edith M. Brown, Notary Public, Kings County, No. 43. Certificate filed New York Co. No. 115. New York County Register's No. 8105. Commission expires March 30, 1928.

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[fol. 44] Exhibit D to Bill of Complaint

Third supplemental agreement, made December 1, 1927 between Sparkill Realty Corporation, a New York Corporation, having an office at 17 West 44th Street, in the City of New York, first party, and Standard Trap Rock Corporation, a New York Corporation, having an office at 26 Cortlandt Street, in the City of New York, second party:

The parties hereto desire to modify as hereinafter provided the provisions of an Agreement between the parties dated May 19, 1927 (hereinafter called the Lease) as now modified by the Second Supplemental Agreement between the parties hereto dated October 19, 1927.

Therefore the parties hereto for themselves and their respective successors and assigns agree as follows:

1. Article First of the Lease is hereby amended by adding thereto a paragraph to read as follows:

All royalties herein provided for shall be payable in gold coin of the United States of or equal to the standard of weight and fineness existing May 19, 1927.

2. Article Second of the Lease is hereby modified to read as follows:

Second. Whenever used in this Agreement the word "year" means the twelve months period from October 1 to September 30, both inclusive, and the term "cubic yard" refers exclusively to measurement after crushing.

3. Article Thirteenth of the Lease is hereby modified to read as follows:

Thirteenth. The second party may, at its option, renew this lease for a period of twenty (20) years from the expiration hereof, on the same terms and conditions (except that the provisions of Article Third shall not apply), upon first giving to the first party not less than six (6) months' [fol. 45] notice, in writing, previous to the expiration of this lease, of its intention so to do.

4. Pursuant to the provisions of Article Sixteenth of the Lease the tract of land designated as lot No. 35 on the map or plot referred to in Exhibit A attached to the Lease (which lot the first party represents that it has acquired subsequent to the date of the lease) is included within the lease to the same effect as though originally described in said Exhibit A.

5. Subject to the foregoing modifications all of the terms and provisions of the Lease dated April 19, 1927 as modified by the Second Supplemental Agreement made October 19, 1927 shall remain in full force and effect.

In witness whereof the parties hereto have duly executed these presents in duplicate the day and year first above written.

Sparkill Realty Corporation, by John Otto, President. Attest: Walter Barnwell, Secretary. (Seal.)
Standard Trap Rock Corporation, by W. Butler Duncan, President. Attest: Anderson Dana, Secretary. (Seal.)

[fol. 46] State of New York,
County of New York, ss:

On this 10th day of December, 1927, before me personally came John Otto, to me known, who, being by me duly sworn, did depose and say that he resides in New York City, that

he is the President of Sparkill Realty Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

C. L. Donaldson, Notary Public, Nassau County. Certificate filed in New York County. Clerk's No. 277. Register's No. 9228. Commission expires March 30, 1929.

STATE OF NEW YORK,
County of New York, ss:

On this 8th day of December, 1927, before me personally came W. Butler Duncan, to me known, who, being by me duly sworn, did depose and say that he resides in 115 West 72nd Street, New York City; that he is the President of Standard Trap Rock Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Edith M. Brown, Notary Public, Kings County No. 43. Certificate filed in New York Co. No. 115. New York Co. Register No. 8106. Commission expires March 30, 1929.

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[fol. 47] EXHIBIT E TO BILL OF COMPLAINT

October 14, 1927.

Mr. Augustus L. Richards, 100 Broadway, New York City.

DEAR SIR: In reply to your request to the Sparkill Realty Corporation to place a valuation upon its property we beg to state as follows.

The company owns approximately 125 acres of trap rock land with fifty acres of meadow lots with a cliff frontage of about a mile and a river frontage of one thousand feet. A

very large amount of trap rock can economically and easily be removed from t..e property. The property is under lease to the Standard Trap Rock Company for a period of 20 years with a right of renewal of an additional 20 years. The Trap Rock Company is under obligation to install machinery and apparatus upon the property, having an annual capacity of not less than 500,000 cubic yards. A royalty payment of $35,000 is to be paid to the Sparkill Realty Corporation upon the basis of 500,000 cubic yards annually and for production in excess of that amount 6% royalty is to be paid up to 600,000 cubic yards and 5¢ on any excess over that amount. We understand that the cost of machinery and apparatus, including incidental expenses, will amount to approximately $800,000. The property is within a short distance of the City of New York and contains the best trap rock quarry within a reasonable distance of the city. There is a large market for the trap rock and there is no question that a considerable profit will be made upon the sale of the trap rock.

We believe that the income by reason of the lease by the Sparkill Realty Corporation to the Standard Trap Rock Company will approximate $80,000 annually.

In addition to the value of the trap rock the value of the water front property with the thousand feet frontage on the river and fifty acres in one block is very large.

[fol. 48] As the demand for crushed stone in the metropolitan district is so great and is growing yearly, we feel that the lessee will be forced to increase its capacity far beyond that provided in the lease in order to meet the demand.

We believe that the value of the property owned by the Sparkill Realty Corporation is not less than $3,000,000 and that this valuation can be legally established. The lease to the Trap Rock Company was entered into more than seven months ago. The delay in the operation of the plant has already caused the Sparkill Corporation considerable damage.

Very truly yours, —— ——.

HJH:D.

Standard Trap Rock Corporation

Statement, Oct. 12, 1928

| | | Incurred | Paid | Balance |
|---|---|---|---|---|
| Rockland L. & P. Co | | $50,000.00 | $40,000.00 | $10,000.00 |
| Burrell Eng. & Cons. Co. (Plant Cons.) | $375,000.00 | | | |
| Burrell Eng. & Cons. Co. (Extra work Silo #5) | 3,778.62 | | | |
| Burrell Eng. & Cons. Co. (Extra work tunnel) | 1,603.53 | | | |
| | | 380,382.15 | 293,250.00 | 87,132.15 |
| Allis-Chalmers Mfg. Co. (Crushing Mach. & Screens) | $211,725.00 | | | |
| Allis-Chalmers Mfg. Co. (Transformer changes) | 1,458.00 | | | |
| Allis-Chalmers Mfg. Co. (Control equip. changes) | 150.00 | | | |
| Allis-Chalmers Mfg. Co. (Conveyors) | 50,000.00 | | | |
| Allis-Chalmers Mfg. Co. (Conveyor changes) | 1,172.00 | | | |
| | | 264,505.00 | 125,182.55 | 139,322.45 |
| Marion Steam Shovel Co. (Electric shovels) | | 99,800.00 | 5,400.00 | 94,400.00 |
| Milwaukee Elec. Crane Co | | 10,000.000 | 10,000.00 | ..... |
| Robins Conveying Belt Co. (Belts) | | 22,398.67 | ..... | 22,398.67 |
| Robins Conveying Belt Co. (Gyrex screens) | | 8,000.00 | ..... | 8,000.00 |
| Bickel Dredging Co | | 16,437.84 | 16,437.84 | ..... |
| Development | | 42,252.08 | 42,252.08 | ..... |
| Organization | | 4,425.82 | 4,425.82 | ..... |

| | | | | |
|---|---|---|---|---|
| Auto truck | | 5,300 00 | 5,300 00 | .... |
| Office Furniture & Fixtures | | 568 12 | 568 12 | .... |
| Buildings | | 1,197 28 | 1,197 28 | .... |
| Equipment | | 17,137 29 | 17,137 29 | .... |
| Taxes | | 90 00 | 90.00 | .... |
| Anderson Dana. | Interest | 104 57 | ..... | 104 57 |
| W. B. Duncan | Interest | 50 93 | ..... | 50 93 |
| Jas. G. Shaw. | Interest | 50 10 | ..... | 50 10 |
| | | $922,699 85 | $561,240 98 | $361,458 87 |

[fol. 50] EXHIBIT G TO BILL OF COMPLAINT

Conservation Department, Division of Parks, State Council of Parks

Acting under the provisions of Section 4, Chapter 16 of the Laws of 1926, reappropriated Chapter 75, Part 5, of the Laws of 1928.

Pursuant to the provisions of Section 4 of Chapter 16 of Laws of 1926, reappropriated Chapter 75, Part 5 of the Laws of 1928, the State Council of Parks, Division of Parks, Conservation Department at a regular meeting held at Watkins Glen State Park, Schuyler County, New York, Saturday, September 29, 1928, approved estimates and maps covering the following project for acquisition of land, which project was also duly submitted to the Governor, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee and received their approval.

Conservation Department, Division of Parks, State Council of Parks, by Robert Moses, Chairman. Henry F. Luts, Secretary.

Dated September 29, 1928.

Committee on Approval of Park Estimates and Maps Consisting of the Governor, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee Acting under the Provision of Section 4, Chapter 16 of the Laws of 1926. Reappropriated Chapter 75, Part 5, of the Laws of 1928.

Pursuant to the provisions of Section 4, of Chapter 16 of Laws of 1926, reappropriated Chapter 75, Part 5 of the Laws of 1928, we, the undersigned, do hereby approve the following parks project for acquisition of land which together with the maps and estimates have been submitted by the State Council of Parks, Division of Parks, Conservation Department:

II

Project E, Land Acquisition, Palisades Interstate Park

Acquisition of any or all lands (including lands under water) with the jurisdiction of the Commission, as defined

by Chapter 242, Laws of 1928, in the towns of Clarkstown and Orangetown, County of Rockland, State of New York, as shown on key map which is attached, $600,000.

(Signed) Alfred E. Smith, Governor. C. J. Hewitt, Chairman Senate Finance Committee. Eberly Hutchinson, Chairman Assembly Ways and Means Committee.

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[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JAMES G. SHAW

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, ss:

James G. Shaw, being duly sworn, says:

I am Vice-President and General Manager of Standard Trap Rock Corporation, one of the plaintiffs in this suit and have been personally engaged in all the matters and have personal knowledge of all the facts hereinafter set forth.

My experience in stone quarrying extends over a period of about forty (40) years during which I have been engaged almost continuously in the business.

[fol. 52] I graduated in 1885 as a civil engineer at the National Normal University, Ohio, and entered the employ of Carbon Limestone Company, Lawrence County, Pennsylvania, becoming accountant for the Company in 1886 and serving as Vice-President and General Manager of the Company from 1887 to 1896. In 1896 I built and operated an extensive stone plant in Blair County, Pennsylvania. From 1897 to 1901 I was Vice-President and General Manager of the Hudson River Stone Supply Company at Clinton Point, New York, operating dolomite quarries at Clinton Point. In 1901 I organized the Clinton Point Stone Company and operated it as General Manager until 1911. In 1901 this Company acquired the dolomite quarries at Clinton Point of the Hudson River Stone Supply Company; in 1902 a trap rock quarry at Guttenberg, New Jersey, and

leased a limestone quarry at Verplanck's Point, and in 1903 a trap rock quarry at Hook Mountain, later acquired by the Board of Commissioners of the Palisades Interstate Park and a granite quarry at Round Island, below Bear Mountain. From 1911 to 1919 I was Vice-President and General Manager of the Upper Hudson Stone Company; bought and operated the quarries at Clifton Point and Marlborough and operated the leased quarry at Verplanck's Point, and on January 1, 1919, sold out to the New York Trap Rock Corporation. From 1919 to 1922 I was Vice-President and Operating Manager of the New York Trap Rock Company. In 1922 I organized and have since served as Vice-President and Manager of Seaboard Sand & Gravel Corporation which operates the sand and gravel property at Port Jefferson, Long Island, hereinafter mentioned. Plaintiff, Standard Trap Rock Corporation, was organized under the Stock Corporation Law by my associates and me and was incorporated May 17, 1927.

As Vice-President and General Manager of Plaintiff, Standard Trap Rock Corporation, I had supervision and direction of the plans for the development of the property involved in this suit, making repeated examinations and inspections of the property and plant and from my experience in the acquisition, development and operation of trap rock quarries along the Hudson River am of opinion:

[fol. 53] 1. That the Tallman quarry site contains more than forty million cubic yards, after crushing, of trap rock of the highest quality and grade, all of which is readily and practically available for quarrying and crushing.

2. The plant of plaintiff, Standard Trap Rock Corporation, in design, material and arrangement conforms to the most modern and efficient methods of stone crushing and would be adequate for and capable of crushing, conveying and storing approximately seven hundred and fifty thousand cubic yards of trap rock from the adjacent quarry annually.

3. The proposed conveyor system and dock would furnish proper and adequate method for conveying crushed rock from silos and loading the same on scows to the full capacity of the plant.

4. The entire annual capacity of the plant can be mined, crushed, loaded on scows and brought to New York at an average cost of about $.98 per cubic yard, which if increased $.15 per cubic yard to $1.13 per cubic yard would yield a profit of — least $.72 per cubic yard on the basis of an average selling price of $1.98 per cubic yard. The current market prices of the product range from about $1.90 to $2.40, making a profit on seven hundred and fifty thousand cubic yards per annum of well over $500,000.

5. The market for the entire output of the quarry plant is assured by reason of the demand which, as well as the market price, has been increasing for a considerable number of years. Practically all of the crushed stone now used in the New York market is supplied by the New York Trap Rock Corporation of which I was for several years Vice-President and Operating Manager and in this connection I refer to the statement contained in a letter dated December 15, 1926 from Wilson P. Foss, Chairman of the Board of the New York Trap Rock Corporation to bankers purchasing its issue of First Mortgage Bonds as follows:

"The demand for products of the company is constantly increasing and, for each of the years since the organization of the New York Trap Rock Corporation, has been in excess of production. Government statistics indicate the [fol. 54] value of crushed stone used in 1900 as $6,525,000 as compared with similar figures for 1924 of $73,681,576."

The property of plaintiff, Sparkill Realty Corporation, came to the attention of my associates and myself in 1925. We have been successfully operating a sand and gravel property at Port Jefferson, Suffolk County, New York, since 1922. Shortly after the establishment of this business it was found that many customers needed broken stone. The purchasers of the trap rock quarry formerly operated by us then refused to sell their product to customers using our gravel.

In many contracts, among others those for the construction of New York State highways, there is specified broken stone and gravel cannot be used, making it necessary to obtain a trap rock quarry for operation in cooperation with our gravel business.

After prolonged consideration and careful examination and inspection extending over a period of about two years, the quarry property involved in this suit and described in the bill of complaint on the western bank of the Hudson River was leased.

On or about April 13, 1927 plaintiff, Sparkill Realty Corporation, entered into a written agreement with my associate, Anderson Dana, individually, in which it granted an option for the lease of the said property for a period of sixty days. Thereafter, on May 17, 1927 plaintiff, Standard Trap Rock Corporation, was incorporated under the Stock Corporations Law of the State of New York by the filing of a certificate, and on May 19, 1927 its organization was completed by the election of W. Butler Duncan as president, James G. Shaw as vice-president and Anderson Dana as secretary and treasurer.

Thereafter on May 19, 1927 an agreement of lease was executed between plaintiff, Sparkill Realty Corporation, and plaintiff, Standard Trap Rock Corporation, under which the property described in the complaint was leased to plaintiff, Standard Trap Rock Corporation, for a period [fol. 55] of twenty years from January 1, 1928, with a privilege of renewal for twenty years, for quarry purposes, upon the terms contained in said written lease. Supplemental agreements in writing were thereafter made between plaintiffs, the first being dated May 19, 1927, the second October 19, 1927 and the third December 1, 1927. Copies of the said agreement of lease and supplemental agreements are annexed to the bill of complaint marked Exhibits "A," "B," "C" and "D" and made a part thereof.

On June 11, 1927 Messrs. Hughes, Rounds, Schurman & Dwight, counsel for defendants, Board of Commissioners of Palisades Interstate Park Commission, notified plaintiffs that on May 7, 1927 a resolution had been adopted by the defendants, Board of Commissioners of Palisades Interstate Park, directing preliminary steps be taken towards the acquisition of the property described in the complaint for park purposes and that the property to be acquired consisted of the meadowlands and uplands to the top of the cliff.

On June 14, 1927 Messrs. Appleton, Rice and Perrin, acting as attorneys for plaintiff, Standard Trap Rock Corporation, communicated with said counsel for defendants, Board of Commissioners, in writing acknowledging receipt of the said previous communications and stating that on April 13, 1927 deponent had obtained the said option, that the said lease had subsequently been made, that a considerable expense had already been incurred and substantial commitments assumed, including an undertaking to equip and complete a large plant, and further stating that "in this situation if the property is to be condemned Standard Trap Rock Corporation naturally wishes to avoid further expense in so far as compatible with its obligations under the lease."

On July 6, 1927 Augustus L. Richards, Esq., a member of the firm of Hughes, Rounds, Schurman & Dwight, communicated in writing to Edwin T. Rice, Esq., a member of the firm of Appleton, Rice & Perrin, that he had conferred with the defendant White and that it would be impossible to advise when proceedings for the acquisition of the property would be commenced, "further than to say that the [fol. 56] Commission expects to proceed with reasonable expedition in performance of its own functions and duties in the premises."

On July 12, 1927 Mr. Rice advised Mr. Richards that plaintiff, Standard Trap Rock Corporation, was ready and willing to appear before the Commission and, after several postponements, at the request of Mr. Richards blue-prints were forwarded showing test borings on the meadow and permission was granted to defendants, Board of Commissioners, to make such borings. Correspondence between the attorneys for the respective parties ensued, finally resulting in a request from Mr. Richards for the submission to the defendants, Board of Commissioners, of an offer of sale, and in pursuance thereof a letter was sent by the attorneys for the plaintiff, Standard Trap Rock Company, to Mr. Richards under date of October 14, 1927, a copy of which is hereto annexed, made a part hereof and marked Exhibit "E," which contained a description and estimate of the value of the plaintiff, Standard Trap Rock Corporation's, interest in the property.

On October 18, 1927, Messrs. Hughes, Rounds, Schurman & Dwight communicated with Messrs. Appleton, Rice & Perrin by letter stating that the letter of plaintiff, Standard Trap Rock Corporation, dated October 14, 1927, and other data and information had been submitted to defendants, Board of Commissioners of Palisades Interstate Park "who have requested us to report to you that at their meeting today it was decided and resolved by them that their counsel be instructed to take no steps for the condemnation of the Tallman's Mountain property."

On October 19, 1927 Messrs. Appleton, Rice & Perrin wrote Messrs. Hughes, Rounds, Schurman & Dwight acknowledging receipt of their letter of October 18th and stating "our clients are accordingly proceeding with the plans which they had made for the development of the quarry and which have been in abeyance since the receipt of your letter of May 13, 1927."

No further communication, written or oral, was received by either of the plaintiffs from defendants, Board of Commissioners or any department of the State of New York [fol. 57] until August 18, 1928, on which date Bickel Dredging Company, which had been engaged for several weeks in operations at the property, was served with a notice of a resolution of the Board of Commissioners of the Land Office at a meeting held August 16, 1928, requiring the cessation of dredging operations. Deponent is informed, believes and therefore alleges that this action was taken at the request of defendants, Board of Commissioners of Palisades Interstate Park, who had been informed of the plan for dredging eleven months prior and on or before September 20, 1927.

Between October 18, 1927 and October 11, 1928, the date of the notice hereinafter mentioned, plaintiff, Standard Trap Rock Corporation, incurred contractual obligations for the construction and equipment of its plant in the sum of $922,699.85. A schedule marked Exhibit "F" is hereto annexed and made a part hereof, showing the corporations with which such contracts were made, the dates thereof, the general nature of the work to be done and the amount actually paid the contractors, together with other expense incurred.

I am informed that Chapter 602 of the Laws of 1924 provides for the issuance of bonds of the state in an amount not to exceed $15,000,000, the proceeds of which are to be paid into the State Treasury and so much thereof as may be necessarily expended is appropriated for the development, improvement and extension of state parks, including the acquisition of lands for that purpose. Section 3 provides that the proceeds of such bonds, after appropriation or appropriations therefrom by the Legislature, shall be applicable to several purposes; among others, $3,500,000 for the Palisades Interstate Park. Section 4 provides:

"The moneys for the development, improvement and extension of the Palisades Interstate Park shall be expended and the land shall be acquired by the Commissioners of the Palisades Interstate Park under the provisions of Chapter 170 of the Laws of 1900 as amended."

Section 5 provides:

"The moneys appropriated for the acquisition of land under this Act shall be available for the payment of the [fol. 58] purchase price where lands are acquired by contract and for payments of judgments and awards in case of purchase by condemnation."

Section 7 provides:

"The law shall not take effect until after submission to the people at the General Election November 1924" and prescribes the form of ballot, the material portion of which reads:

"Shall Chapter 602 of the Laws of 1924 * * * be approved?"

I am informed that at the General Election of 1924 the question was submitted and received the approval of a majority of all the votes cast for and against the law.

Chapter 16 of the Laws of 1926 is entitled "An Act making appropriation for the extension and improvement of existing state parks and the establishment of new state parks and parkways in order to create a comprehensive and

unified state park system for the promotion of the recreation, instruction and health of the people, to carry out the provisions of Chapter 602 of the Laws of 1924."

Section 1 (2) of this Act appropriated out of moneys realized from the sale of bonds issued under Chapter 602 of the Laws of 1924, $3,500,000 for the Palisades Interstate Park. Section 4 required submission of estimates, maps and descriptions to the State Council of Parks, to the Governor, to the Chairman of the Senate Committee on Finance and to the Chairman of the Assembly Committee on Ways and Means. The memorandum of the action of the Conservation Department, Division of Parks, State Council of Parks, dated September 29, 1928, copy of which is hereto annexed marked Exhibit "G" and made a part hereof, purports to record action under Section 4, Chapter 16 of the Laws of 1926, reappropriated Chapter 75, Part V of the Laws of 1928, which Part V reappropriated and made immediately available for the same purposes as the former appropriations sums described as unexpended bal-
[fol. 59] ances of former appropriations and contains an item entitled "State Park System Fund by Chapter 16 of the Laws of 1926 (re $11,912,850.58)."

Section 602 of the Laws of 1924 provides specifically that the moneys therein provided shall be expended and lands acquired under the provisions of Chapter 170 of the Laws of 1900. Section 16 of the latter Act provided the Commissioners of the Palisades Interstate Park shall not acquire the title to or enter into possession of any premises under condemnation until after an award has either been paid to the owner or the County Clerk and that such payments should operate to transfer the title to the said Commissioners.

Said statute was totally repealed by Chapter 242 of the Laws of 1928, Section 50, and thereafter there was no statute under which moneys realized from the bonds authorized by Chapter 602 of the Laws of 1924 could be expended in the acquisition of land by the Commissioners of the Palisades Interstate Park. Chapter 242 of the Laws of 1928, which creates anew the Commissioners of the Palisades Interstate Park, reenacted the provisions of Chapter 170 of the Laws of 1900 and added thereto Section 761 authorizing acquisition of land by entry and appropriation under

Section 59 of the Conservation Law, a power which did not exist at the time of the passage of the Act making the only existing appropriation for use by defendants, Board of Commissioners of Palisades Interstate Park. I am advised by counsel for plaintiff, Standard Trap Rock Corporation, that no funds resulting from bonds authorized by Chapter 602 of the Laws of 1924 have ever been authorized by the people as required by the Constitution of the State for acquisition by entry and appropriation and that there is therefore no sum available out of said bond issue for that purpose by defendants, Board of Commissioners of Palisades Interstate Park.

On or about October 11, 1928 defendants, Commissioners of the Palisades Interstate Park, assuming to act under Chapter 242 of the Laws of 1928 and other applicable laws of the state of New York, served on plaintiffs a notice that the property described therein, being the property described in the complaint herein, was appropriated by the people of the state of New York for public and state park [fol. 60] purposes with the approval of the Governor, and thereafter entered upon and took possession of said property, of which they have since retained possession to the exclusion of the plaintiffs.

The aforesaid lease covers the entire property of plaintiff, Sparkill Realty Corporation, which has a river frontage in excess of 1,000 feet. It has been estimated by competent engineers that the amount of crushed trap rock which can be economically removed is in excess of 40,000,000 cubic yards. Under the lease plaintiff, Standard Trap Rock Corporation, is obligated to install quarrying machinery having an annual capacity of not less than 500,000 cubic yards and to pay a minmum annual royalty to plaintiff, Sparkill Realty Corporation, of $35,000. at the rate of 7¢ per ~~cubic~~ yard up to 500,000 cubic yards, and for production in excess a royalty at the rate of 6¢ per cubic yard up to and including 600,000 cubic yards, and a royalty at the rate of 5¢ per cubic yard on all quantity over 600,000 cubic yards.

Cost of installation incurred by plaintiff, Standard Trap Rock Corporation, of a quarrying plant by the Allis-Chalmers Company and the Robins Conveying Company, as set forth on Exhibit "F" hereto annexed, including con-

struction of dock and dredging, together with interest and taxes during construction, amounts to $922,699.85.

The property is within 18 miles of the Metropolitan district of the city of New York, which is the largest market for trap rock. The situation of the property is such that during winter months it could be operated at least 5 weeks longer than other quarries situated higher on the river. The short distance from the city of New York enables scows to reach the city on a single tide, where other quarries more distant require two or more tides for the same purpose. The physical nature of the property is such that the open face for the entire frontage reduces the cost of development and makes possible the quarrying of rock from a single bench about nine feet above mean high tide.

Market for trap rock is well assured and deponent from his expericence verily believes and therefore alleges that a net profit of not less than 72¢ per cubic yard can be obtained on an annual output of 750,000 cubic yards, making a total annual profit of $540,000.00.

[fol. 61] Plaintiff, Standard Trap Rock Corporation, but for the unlawful action of defendants, Board of Commissioners, would have placed its plant in operation at a rate of profit as aforesaid not later than the month of November, 1928, and would have been in steady operation since that time by reason of the weather conditions since prevailing. Plaintiff has also been prevented from entering into contracts for the coming year, to its added great loss.

Defendants, Board of Commissioners, may at any time enter upon the destruction and demolition of the plant already installed, the machinery in which is rapidly deteriorating. Liens on the property have been filed by Burrell Engineering & Construction Company, contractors, and plaintiff is therefore subjected to the liability of actions for damages. Unless plaintiff is protected by a temporary injunction it will suffer further irreparable loss.

Plaintiff has issued stock in the sum of about $750,000.00 and has been unable by reason of the facts hereinbefore stated to earn any return upon its property or pay any dividends.

Deponent has stated all the facts to Messrs. Cullen and Dykman, attorneys for plaintiff, Standard Trap Rock Corporation, and is advised by them and therefore alleges that Chapter 242 of the Laws of 1928 and the notice, certificate

and description filed by defendants, Board of Commissioners, thereunder are confiscatory of the property of plaintiffs, unconstitutional and void and respectfully asks this Honorable Court for a temporary restraining order and an interlocutory injunction restraining the defendants and their agents and servants from enforcing said statute, notice, certificate and description against the plaintiff, and from any further continuance of possession of this property.

James G. Shaw.

Sworn to before me this 5th day of March 1929. Augustus J. Wheeler, Notary Public, Nassau County. Cert. filed in Kings Co. Clerk's No. 99. Reg. No. 9317. New York Co. Clerk's No. 853. Reg. No. 9611.

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[fol. 62] In United States District Court

[Title omitted]

Affidavit of Ellis C. Soper

United States of America,
Southern District of New York,
State, County, and City of New York, ss:

Ellis C. Soper, being sworn, says:

I graduated from the Armour Institute of Technology, Chicago, Illinois, in 1903, with a degree of Mechanical Engineer. I am a member of the American Society of Civil Engineers, American Society of Mechanical Engineers and American Institute of Mining Engineers.

I have been investigating, designing, constructing and operating Portland cement, crushing, lime and fertilizer plants for the past twenty-five years. Every Portland cement plant, with very few exceptions, must have a well [fol. 63] located, accessible and economical quarry and crushing plant since ordinarily seventy-five per cent. of the material entering Portland cement is hard rock of a certain chemical composition. This experience has covered United States, Mexico, Cuba, Central America, Europe and Canada. During the vacation of 1901, 1902 and 1903, I worked as a Draftsman and Construction Engineer for Newaygo Portland Cement Company, Newaygo, Michigan.

After graduation I was Chief Draftsman and Construction Engineer of the Hecla Portland Cement Company at Bay City, Michigan, and in 1904 I went to Kansas as Engineer and Superintendent of Construction of the Kansas Portland Cement Company of Iola. During this time I was Vice-President of the Hunt Engineering Company, which company was designing and building plants in Kansas and South Dakota. In 1905 I designed and built a plant at Independence, Kansas, and in 1906 and 1907 the plant of the Dixie Portland Cement Company in Tennessee. In 1908 and up to 1911 I was located in Detroit as a Consulting and Construction Engineer and during that time I designed and built what is now the Michigan State Cement Plant near Jackson, Michigan, lime plants in Northern Michigan, Gypsum Plant in Western New York, and rebuilt a cement plant at Wiarton, Canada. From 1912 to 1916 I built two crushing plants in Georgia and an asphalt plant in Chattanooga, and was Construction Engineer on the Market Street Concrete Bridge at Chattanooga which cost $1,000,000. From 1916 to 1917 I designed and built the Cuban Portland Cement Company's plant in Cuba. From 1918 to 1920, I designed and built phosphate rock plants for the Armour Fertilizer Company and operated their Tennessee Chemical Company's plants at Nashville. From 1920 to date my headquarters have been in New York City and during this time I have been engaged in various consulting work, among the companies being the Edison Portland Cement Company and Pennsylvania Portland Cement Company. In my last large work I originated and formed the combination of seven cement plants known as the Pennsylvania and Dixie Cement Corporation of which company I have been a director and Consulting Engineer since its inception in 1926.

[fol. 64] I have visited and inspected the trap rock quarry and stone crushing plant of plaintiff, Standard Trap Rock Corporation, at Piermont, New York, involved in this proceeding. I have been furnished with data showing the cost of construction of the plant and have calculated the cost of operation. I have examined the lease between plaintiff Sparkill Realty Corporation and plaintiff Standard Trap Rock Corporation and am familiar with its provisions. For the purpose of this affidavit, I have adopted the cubical contents of the property as stated in the affidavit of Edward W. Christie in this proceeding.

I am familiar with the cost of labor and material in such a plant and also with the market for crushed stone in the so-called Metropolitan District surrounding the City of New York.

The property is within eighteen miles of the Metropolitan District and is such that it can be operated longer during the year than quarries situated at a greater distance on the Hudson River. My inspection of the property shows an open face for the entire frontage materially reducing the cost of development.

I find the plant constructed by plaintiff, Standard Trap Rock Corporation, to be thoroughly modern in every respect, well adapted for its proposed use and by reason of its nearness to the quarry and general layout I consider it to be one of the best properties of its sort which I have seen in my experience.

Based upon my experience and investigation as stated, I am of opinion that the fair market value of this property as of October 10, 1928, consisting of the quarry and plant, is the sum of $4,000,000, from which amount an allowance of approximately $75,000 should be made for completion of facilities.

Ellis C. Soper.

Sworn to before me this 2nd day of March, 1929. Augustus J. Wheeler, Notary Public, Nassau County. Cert. filed in Kings Co. Clerk's No. 99. Reg. No. 9317. New York Co. Clerk's No. 858. Reg. No. 9611.

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[fol. 65] In United States District Court

[Title omitted]

Affidavit of Frank T. Gucker

United States of America,
Southern District of New York,
State, County, and City of New York, ss:

Frank T. Gucker, being duly sworn, says:

I have been engaged in the operation of trap rock quarries and stone crushing plants and sale of their product for

thirty-six years and am president of the John T. Dyer Quarry Company, the main office of which is at Norristown, Pennsylvania. This Company owns and operates three trap rock quarries each equipped with a crushing plant, the [fol. 66] total output being approximately a million tons annually. I have bought and developed quarries and generally engaged in all the activities of this industry.

On October 23, 1928 I visited the property of plaintiff Sparkill Realty Corporation, at Piermont, New York, described in the complaint in this suit. It consists of meadowland and upland in the form of a cliff, the face of which consists of trap rock similar to that quarried and crushed by my Company.

The trap rock in the cliff is exposed to an extent which would obviate stripping such as is usually necessary in the development of a quarry. There exists what is generally known as a natural face. This conformation together with the fact that only one lift or bench would be necessary and the short distance from the quarry face to the primary crusher makes most economical operation possible. Moreover, the grain of the stone and cleavages make most economical drilling and blasting possible so that the combined circumstances are more than ordinarily favorable to economic and efficient operation.

I inspected the plant erected on the property by plaintiff, Standard Trap Rock Corporation, and, from my knowledge of trap rock crushing plants throughout the East, I am able to state that the plant of plaintiff, Standard Trap Rock Corporation, is modern in every respect and well planned and equipped and represents the latest practice and art in the industry.

The plant of plaintiff, Standard Trap Rock Corporation, is fairly comparable in my opinion with one of the plants of my Company, making it possible for me to estimate cost of production in it. From my experience and observation of the property and plant of plaintiff, Standard Trap Rock Corporation, I estimate the cost of rock in bins after the property is developed and the plant is in working order at approximately sixty (60¢) cents per cubic yard, itemized as follows:

| | | |
|---|---|---|
| [fol. 67] Stripping | $0.01 | |
| Drilling | 0.04 | |
| Explosives | 0.04 | |
| Secondary drilling and blasting | 0.06 | |
| | $0.15 | $0.15 |
| Loading | $0.06 | |
| Hauling | 0.09 | |
| Crushing and screening | 0.25 | |
| | $0.40 | 0.40 |
| General expense | | 0.05 |
| Cost of Rock in Bins | | $0.60 |

Frank T. Gucker.

Sworn to before me this 13th day of February, 1929. John Monaghan, Notary Public, Westchester Co. Kings Co. Clerk's No. 7. Kings Co. Register's No. 9105. Commission expires March 30, 1929. (Seal.)

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[fol. 68] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ARTHUR S. LANE

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, ss:

Arthur S. Lane, being duly sworn, says:

I have operated trap rock quarries and stone crushing plants and been engaged in the sale of trap rock since April 1st, 1891 and am treasurer of John S. Lane & Son, Inc. John S. Lane & Son, Inc. is the successor of a partnership formed by my father in 1891. Its principal office is located at Meriden, Connecticut, and it owns and operates five

[fol. 69] quarries and plants situated at Westfield, Massachusetts, West Springfield and Amherst, Massachusetts, with an annual output of approximately 750,000 tons of trap rock.

I personally bought and developed all the trap rock quarries now operated by my Company. From 1893 to 1898 John S. Lane & Son, a partnership, operated a trap rock quarry at Guttenberg, New Jersey on the Hudson River at the lower end of the Palisades formation and I am familiar with the formation and character of rock along the western bank of the Hudson River from Piermont to Guttenberg.

From 1902 to 1926 I was treasurer of The Connecticut Quarries Company, operating four to six trap rock quarries and stone crushing plants with an average annual output of approximately 800,000 tons per annum.

On November 1, 1928 I visited the property of plaintiff, Sparkill Realty Corporation, at Piermont, New York, described in the complaint in this suit. The upland portion of this property consists of a cliff, the face of which is trap rock similar to that quarried and crushed by my Company at Guttenberg, New Jersey.

The rock in the cliff is exposed, enabling me to state from my experience that the whole formation is trap rock above mean high water. The fact of such exposure makes it unnecessary to strip the cliff to any extent, such as is usually necessary in the development of a quarry. This property can be developed and operated as a quarry with one lift or bench. The distance from the quarry face to the primary crusher is short. These circumstances render economic and efficient operation possible.

I inspected the plant erected on the property, going through it in detail and believe it to be the best stone crushing plant I have ever seen.

I have examined a copy of the lease attached to the complaint in this suit and marked Exhibit A to ascertain the amount of royalty payable to the landlord.

From my experience and investigation I estimate the cost of rock in bins at approximately sixty-four and three-quarter (64¾¢) cents per cubic yard, itemized as follows:

| | |
|---|---|
| [fol. 70] Royalty | $ .0638 |
| Stripping | .0100 |
| Upkeep and operation of trucks | .0390 |
| Electrical current | .0893 |
| Upkeep of shovels | .0116 |
| Labor except truck drivers | .2647 |
| Fuel oil | .0003 |
| Lubricating oil | .0040 |
| Explosives | .0678 |
| General repairs | .0438 |
| Superintendence | .0100 |
| Miscellaneous expenses | .0468 |
| | $ .6511 |

Arthur S. Lane.

Sworn to before me this 13th day of February, 1929. Frederick A. Delatour, Notary Public, 120, Kings Co. N. Y. Cert. filed N. Y. Co. 692.

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[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WILLIAM E. KEINE

UNITED STATES OF AMERICA,
Southern District of New York,
State, County and City of New York, ss:

William E. Keine, being sworn, says:

I am and at all times herein mentioned have been in charge of the sales engineering in the Crushing and Cement Machinery Division of Allis-Chalmers Manufacturing Company in New York, Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Pennsylvania, West Virginia, Virginia, Maryland, Delaware and certain sections of the Caro-[fol. 72] linas, in other words, the Atlantic Seaboard. As such I have supervision of the preparation of plans, specifications, cost estimates and contracts for the construction of stone crushing and cement plants throughout the ter-

ritory mentioned. I have been employed by Allis-Chambers Manufacturing Company for the last twenty-four years in various capacities in the crushing and cement machinery department. The corporation does a business in this department of several million dollars a year.

Early in the spring of 1927 I visited the property of plaintiff Sparkill Realty Corporation at Piermont with Mr. Anderson Dana and others, and thereafter prepared plans, specifications and estimates which finally resulted in contracts between plaintiff Standard Trap Rock Corporation and Allis-Chalmers Manufacturing Company dated January 31, 1928, February 15, 1928 and May 5, 1928, providing for the preparation of plans and furnishing of machinery specially designed to suit the particular conditions existing at this location.

Thereafter all the machinery called for by the contracts was completed and to a large extent actually installed in the plant.

During the course of construction I visited the plant frequently and am familiar with it. In my opinion, based on my experience, I estimate the cost to plaintiff Standard Trap Rock Corporation of the buildings and machinery installed including quarry equipment, to be somewhat in excess of One million Dollars.

W. E. Keine.

Sworn to before me this 7th day of February, 1929.
Frederick A. Delatour, Notary Public, 120, Kings Co. N. Y.

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[fol. 73] In United States District Court

[Title omitted]

Affidavit of Edward W. Christie

United States of America,
Southern District of New York,
State, County, and City of New York, ss:

Edward W. Christie, being sworn, says:

I am a Civil Engineer and Surveyor, licensed by the State of New York. I have resided and maintained an office at Nyack, New York since nineteen hundred and two and have

been in active practice of my profession since eighteen hundred and ninety-eight.

I have been familiar with the property described in Exhibit A attached to the complaint in this suit for twenty years. It consists of meadowland and upland in the form of a cliff, the average height of which is one hundred and fifty (150) feet above mean high water. The face of the cliff consists of rock commonly known as trap rock.

In 1927 I surveyed the property as described in Exhibit A and prepared a map from said description and my survey. Thereafter I personally determined mean high water at the property and made a topographical survey determining the elevations of the property from mean high water. From said topographical survey I have calculated the cubical contents of the property to be 468,024,802 cubic feet or 17,334,252 cubic yards.

[fol. 74] This calculation does not include three parcels detached from the area included in the foregoing calculation and lying to the south thereof and included in the description attached to Exhibit A, of which I have not had an opportunity to make a topographical survey.

Edward W. Christie.

Sworn to before me this 13th day of February, 1929. John Monaghan, Notary Public, Westchester County. Kings Co. Clerk's No. 7. Kings Co. Register's No. 9105. Commission expires March 30, 1929. (Seal.)

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[fols. 75 & 76] In United States District Court

[Title omitted]

Affidavit of Jackson A. Dykman

United States of America,
State of New York,
County of Kings, ss:

Jackson A. Dykman, being sworn, says: I am a member of the firm of Cullen & Dykman, solicitors for plaintiff Standard Trap Rock Corporation in this suit. Subse-

quent to the argument herein and on the day of the date of this affidavit I obtained from the office of the Comptroller [fol. 77] of the State of New York a certified copy of plaintiffs' Exhibit G, attached hereto.

The copy hereto attached shows that the original approval of the Conservation Department, Division of Parks, State Council of Parks, was signed and filed with the State Comptroller October 8, 1928 and that the approval of the Committee on Park Estimates and Maps, consisting of the Governor, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee, was signed and filed with the Comptroller on the same day.

Jackson A. Dykman.

Sworn to before me this 15th day of April, 1929. John Monaghan, Notary Public, Westchester County. Kings Co. Clerk's No. 76. Kings Co. Register's No. 1342. Commission expires March 30, 1931. (Seal.)

[fol. 78] Conservation Department, Division of Parks, State Council of Parks, Acting under the Provisions of Section 4, Chapter 16, of the Laws of 1926; Reappropriated Chapter 75, Part 5, of the Laws of 1928.

Pursuant to the provisions of Section 4 of Chapter 16 of the Laws of 1926, reappropriated Chapter 75, Part 5 of the Laws of 1928, the State Council of Parks, Division of Parks, Conservation Department, at a regular meeting held at Watkins Glen State Park, Schuyler County, New York, Saturday, September 29, 1928, approved estimates and maps covering the following project for Acquisition of Land, which project was also duly submitted to the Governor, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee and received their approval.

Conservation Department, Division of Parks, State Council of Parks, (Signed) by Robert Moses, Chairman. Henry F. Lutz, Secretary. (Seal Department of Conservation, State of New York, State Council of Parks, 1924.)

Dated Sept. 29/28.

Original approval, signed, and filed with the State Comptroller October 8, 1928. —— ——, the Director of the Budget.

[fol. 79] Committee on Approval of Park Estimates and Maps, Consisting of the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee, Acting under the Provisions of Section 4, Chapter 16, of the Laws of 1926; Reappropriated Chapter 75, Part 5, of the Laws of 1928

Pursuant to the provisions of Section 4 of Chapter 16 of the Laws of 1926, reappropriated Chapter 75, Part 5 of the Laws of 1928, we, the undersigned, do hereby approve the following park project for Acquisition of Land which, together with maps and estimates, has been submitted by the State Council of Parks, Division of Parks, Conservation Department.

II

Project 3, Land Acquisition, Palisade Interstate Park

Acquisition of any or all lands (including lands under water) within the jurisdiction of the Commission, as defined by Chapter 242, Laws of 1928, in the towns of Clarkstown and Orangetown, County of Rockland, State of New York, as shown on key map which is attached, $600,000.

(Signed) Alfred E. Smith, Governor. C. J. Hewitt, Chairman of the Senate Finance Committee. [fol. 80] Eberly Hutchinson, Chairman of the Assembly Ways and Means Committee.

Original approval signed and filed with the State Comptroller October 8, 1928. (Signed) J. H. Wilson, the Director of the Budget.

This allocation approved without being referred to the division of the budget.

Bureau of Canal Affairs, Albany

April 12, 1929.

State of New York, ss:

Comptroller's Office

I have compared the annexed copy of allocation of moneys appropriated by Chapter 16, Laws 1926 with the

original on file in this office, and do hereby certify the same to be a correct transcript therefrom, and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year first above written.

C. H. Mullins, Assistant Deputy Comptroller. (Seal.)

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[fols. 81 & 82] In United States District Court

[Title omitted]

Affidavit of J. Du Pratt White

United States of America,
Southern District of New York,
State, County, and City of New York, ss:

J. Du Pratt White, being duly sworn, says:

I reside at upper Nyack, New York. *For up*torney of the courts of New York, and for upwards of twenty-nine years of this court. I am the President of the Commissioners of the Palisades Interstate Park, a body politic [fol. 83] created by the laws of State of New York (L., 1900, Ch. 170) and continued, after intermediate amendments, by the Conservation Law (L., 1928, Ch. 242).

On October 11, 1928, the Commissioners of the Palisades Interstate Park, with approval of the Governor and the Conservation Commissioner, took the property at Tallman Mountain, near Piermont, Rockland County, New York (described in Ex. 1, hereto annexed and made a part hereof), in eminent domain proceedings pursuant to the Conservation Law and on that day, according to the express provisions of that law, title to the property became vested in the People of the State of New York. During the five months intervening between the taking of the property and the commencement of this action, the State through the Commissioners of the Palisades Interstate Park, has been in undisturbed and exclusive possession of this property to the knowledge of the plaintiffs herein.

I am advised by counsel for the Commission that as a matter of law no basis is shown for the relief demanded in the bill of complaint or in the affidavits. Though the questions involved are almost wholly questions of law, certain facts as to the background of this litigation should be presented to the Court.

## Creation and Organization of the Commissioners of Palisades Interstate Park

Prior to 1900, the States of New York and New Jersey appointed commissions which agreed jointly upon a report to their respective states as to the "means and extent of defacement of Palisades" and as to "means by [fol. 84] which further destruction and defacement may be prevented."

In 1900, the State of New York (L., 1900, Ch. 170) incorporated the "Commissioners of the Palisades Interstate Park" a body politic of ten commissioners, five of whom were not required to be citizens or residents of New York. In the same year, the State of New Jersey (L., 1900, Ch. 87), incorporated the "Commissioners of the Palisades Interstate Park" a body politic of ten commissioners, five of whom were not required to be citizens or residents of the State of New Jersey. The legislation contemplated that the five residents of New Jersey should be appointed members of the New York Commission and vice versa. The purpose of the acts is stated in the report of the New York Commission for the year 1901, as follows:

"By the intention of the two statutes thus indicated, the personnel of the New York Commission is made the same as that of the New Jersey Commission, the Commissioners working in unison in their capacities as representatives of the respective States for the accomplishment of the one object."

Since that time, with a slight and temporary exception, the two States have always appointed the same persons as commissioners for the respective commissions. (Unless the New Jersey Commission is specifically designated, all references herein are to the New York Commission).

The jurisdiction of the two commissions was originally from Fort Lee, New Jersey, on the south, to Piermont

Creek, New York, on the north. The northern boundary [fol. 85] was later extended to embrace the mountainous lands along the west bank of the Hudson River south of Stony Point and still later to the City of Newburgh. The New York park is in several sections; the Palisades section, which runs from the state line to Piermont Creek; and includes the property described in Exhibit 1; the Blauvelt Section; the Rockland Lake—Hook Mountain section; the Harriman Park—Bear Mountain Section, and the Storm King section.

I am thoroughly acquainted with the history and activities of the Commissions. I have been a member of both commissions since their inception; I was secretary of both until 1921, and in that year became president of the New York commission, filling the vacancy created by the death of the former president, the late Mr. George W. Perkins.

At the time of the appropriation of the property described in the appropriation papers, the members of the two commissions were:

Residents of New York: J. DuPratt White, Edward L. Partridge, George W. Perkins, Jr., W. Averell Harriman, Frederick Osborn.

Residents of New Jersey: Frederick C. Sutro, Franklin W. Hopkins, George T. Smith, William Childs, Charles W. Baker.

[fol. 86] The Policy of the Commissions with Respect to the Prevention of Quarrying

From their inception, the commissions deemed that they were under a mandate from the two states to prevent, so far as lay within their power and jurisdiction, the defacement of the slopes along the west bank of the Hudson River by quarrying.

Pursuant to this mandate, at least six quarries, all of them situated on the Hudson River, had before 1921 been closed by purchase or by condemnation, by one or the other commission. (As an officer and a member of both commissions I was in close touch with the purchases and condemnations of all of these quarries). Included in these were quarries which,—(unlike the one here that was never completed or operating),—were at the time of their acquisition going concerns that had been in operation for years and were earning large profits.

The policy was so well known to the public that in 1924-1925, before a particular company attempted to open a quarry, it discussed its plans with representatives of the Commissions and assured them that the quarry would be so conducted behind the mountain as not to deface the slopes fronting the Hudson.

From 1921, when the last of the quarries acquired ceased operating, until plaintiffs started to develop a quarry at Tallman Mountain, all quarrying operations that were, in the judgment of the Commissions, defacing the Palisades or the slopes on the west shore of the Hudson within the jurisdiction of the Commissions, had ceased, and so far as the Commissions knew, no new quarrying operation was threatened or contemplated.

[fol. 87] Through the funds appropriated by the State, the munificent private gifts of money and property to the Commissions, and the assistance and support of property owners and the public, the scenic beauty of the section committed to the charge of the Commissions has been preserved and the lands acquired have been converted into great public parks which now serve the recreational needs of millions of persons annually.

## The Events Leading Up to the Acquisition of the Tallman Mountain Property by Eminent Domain

The property appropriated is situated at Tallman Mountain, near Piermont, Rockland County, New York. It consists, I am informed and believe, of approximately 113½ acres of upland and 57½ acres of marshland. A description of the property is contained in the appropriation papers hereto annexed, marked Exhibit 1 and made a part hereof.

In the spring of 1927, the New York Commission was informed that quarry operations were contemplated at Tallman Mountain. It thereupon, on May 7, 1927, passed a resolution that all preliminary steps be taken looking to condemnation and that counsel for the Commission so notify the owners and ask them whether they wished to consider private negotiations for a sale of the property. This was done and throughout the spring and summer of 1927, there were conferences between Mr. Richards of Hughes, Rounds, Schurman & Dwight (attorneys for the Commission), and the attorneys for the plaintiffs. On

October 14, 1927, the fee owners (see Exhibit E, attached to the moving papers) wrote the Commission, placing a valua-
[fol. 88] tion of $3,000,000 on the fee. On the same day, Messrs. Appleton, Rice & Perrin (attorneys for the Standard Trap Rock Corporation), wrote the attorneys for the Commission, placing a valuation on the leasehold interest of not less than $5,000,000,—making a total valuation of $8,000,000. (Mr. Shaw in his affidavit, page 50, mistakenly states that he attaches as Exhibit E, the letter sent by the attorneys for the Standard Trap Rock Corporation. In fact, Exhibit E is the letter of Mr. Hemmens, the attorney for the Sparkkill Realty Corporation. The letter written the same day by Messrs. Appleton, Rice & Perrin, on behalf of the Standard Trap Rock Company, is not attached by Mr. Shaw.)

At that time, I am informed and believe, the property was wholly unimproved, and the assessed valuation thereof for tax purposes was about $15,000,—less than one-fifth of 1% of the valuation placed thereon by the fee owner and the lessee. In the opinion of the Commission the valuations of the owners and lessee were excessive.

In the course of negotiations, Mr. Richards reported to the Commission that the lessee's attorneys had argued that the land in question was not technically a part of the Palisades and was therefore not within the condemning jurisdiction of the Commission. Thereupon, the Commission asked for an opinion from its counsel and was advised that there was some doubt as to whether the property in question lay within the then condemning jurisdiction of the Commission, but that there was no doubt of the Commission's power to purchase.

In these circumstances, the Commission instructed its counsel to take no steps for the condemnation of the prop-
[fol. 89] erty and to notify the owners accordingly. I attach hereto, as Exhibits 2 and 3, copies of the letters which Mr. Richards sent to the respective parties.

On October 19, 1927, after the receipt of Exhibit 2, one of the attorneys for the lessee, telephoned Mr. Richards and asked for some amplification of the letter. Mr. Richards replied that he could add nothing to what was stated in the letter and that he could not predict what the Commission's future attitude would be.

At the next session of the New York Legislature, the law relating to the Commission was amended in two respects material here: the Legislature made unmistakably clear that the eminent domain jurisdiction of the Commission included the property in question and it expressly empowered the Commission, in its compulsory acquisitions, to proceed by way of entry and appropriation proceedings (L., 1928, Ch. 242 [amending Conservation Law], Secs. 747, 761).

(I am informed and believe that the Conservation Department and its predecessors have uniformly employed the appropriation process for the acquisition of lands by eminent domain for state purposes, to the virtual or complete exclusion of the alternative method of condemnation; the total acquisitions by the State through appropriations and entry proceedings having run, as I understand, since the enactment of the Adirondacks Park Act a generation ago, to many thousands of acres.)

The Appropriation of the Property

After the passage of Chapter 242 of the Laws of 1928, amending and enlarging the Conservation Law, the Com- [fol. 90] mission learned that work was being done upon the property in question, looking to the operation and equipment of a quarry there.

Before the appropriation of the property the Commission renewed its efforts to arrive at some understanding with the lessor and the fee owner, and conversations were had between counsel for the Commission and for the lessee. During all of this time construction work upon the property was proceeding. Finally, the representatives of the fee owner and of the lessee submitted offers. These figures were less than half the prices placed upon the property by the respective parties a year earlier.

The Commission at a meeting on October 9, 1928, decided that these prices were likewise excessive, and that, under the circumstances, further negotiations for the purchase of the property would be fruitless. At the same meeting, the resolution to appropriate was passed. On October 10th, the action of the Commission was approved in writing by the Conservation Commissioner and by Gov. Alfred E. Smith. On October 11th, the appropriation papers were filed in the office of the Secretary of State and on that day they were

served upon the Sparkill Realty Corporation and the Standard Trap Rock Corporation, together with the notice that the lands were appropriated. Thereafter, the papers were filed and recorded in the office of the Clerk of Rockland County.

On October 16, 1928, the Commission's attorneys notified Messrs. Appleton, Rice & Perrin, the attorneys for the lessee, that the personal property on the premises was there at the risk of the lessee. A copy of counsel's letter is attached as Exhibit 4.

[fol. 91] I am informed and believe that immediately after the appropriation papers were served, plaintiffs ceased doing any work on the property; that the contractors and other persons who were engaged in doing work thereon left, taking their machinery and tools with them and that certain movable property and equipment that had been used or was there for use in connection therewith, was likewise removed from the premises.

The State through the Commission has been in exclusive possession of the property as a State park since October 11, 1928, the date when the appropriation became complete by service upon plaintiffs of the appropriation papers. At that time the Commission took over as its agents, the watchmen Hughes and Sheehan, who had been employed by the Standard Trap Rock Corporation. These men were transferred to the Commission's employ and remained therein from October 12th to November 15th. On December 15, 1928, the Commission paid the Standard Trap Rock Corporation $350 to reimburse it for the salaries of these men. From November 15th on, patrolmen from the regular police force of the Commission have been assigned to duty as watchmen on the premises.

I have been in active touch with the Tallman Mountain situation, except between Sept. 21 and Nov. 2, 1928, when I was abroad. I knew the premises well, and had visited them from time to time, saw them shortly before I went abroad and almost immediately after my return. (My statements covering the period of my absence are based upon information obtained from members of the Commission, their attorneys and agents, and from the records of the Commission.)

[fol. 92] I have been advised by our counsel and believe that the value of the property is, as such, not an issue in

this litigation,—that the value is to be fixed in the only court in which the State has consented to have a binding adjudication against it—the Court of Claims. In the circumstances, the Commission—though it denies plaintiffs' estimates of value and in the Court of Claims will challenge the figures now presented on behalf of the plaintiffs—will confine itself to stating the conclusion it reached at the time it appropriated.

All of the members of the Commission were familiar with the property and had visited it at one time or another; many of them had visited it shortly before the appropriation; I have been familiar with the property for forty years and had gone over it on many occasions, some of them just before the appropriation. The Commissioners, at the time of the appropriation, came to the conclusion relying upon the experience of the Commission in connection with the acquisition of numerous properties including quarries, the advice of their staff and of other technical experts and the data and reports in their possession that the property was worth less than $600,000, and that the obligation of the State would not exceed that sum. The Commission thereupon sought and obtained an allocation from the bond issue moneys of $600,000 (see Exhibit G attached to the plaintiffs' moving papers).

I am advised,—and it will be so demonstrated by the argument and briefs of counsel,—that the allocation does not purport to limit, and as a matter of law, could not limit the obligation of the State in any way; that the obligation of the State within the express provisions of the Conserva-
[fol. 93] tion Law, is explicit, absolute and unlimited in amount; and that whatever values the owners may establish in the Court of Claims, the obligation of the State to pay the amount awarded would be unaffected by the circumstance that there had been an allocation in a lesser amount. (As has been judicially noted in a closely related litigation there has never been a case in the whole history of the State where a judgment of the Court of Claims or of its predecessors has been left unpaid.)

The State has taken here only real property. The State has never claimed, nor has the Commission ever exercised, any dominion over the personal property on the premises. On the contrary, the Commission's position in this matter

is as shown in the letter of its counsel to the attorneys for the lessee, Exhibit 4, hereto attached.

J. Du Pratt White.

Sworn to before me this 1st day of April, 1929. J. F. Plaisted, Notary Public, Westchester County. Cert. filed in N. Y. Co. No. 624. Reg. No. 0-17-A. Commission expires March 30th, 1930.

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[fol. 94] EXHIBIT 1 TO AFFIDAVIT OF WHITE

Appropriation Papers

Certified Copy of Resolution

Commissioners of the Palisades Interstate Park

Extract from Minutes of Meeting Held October 9, 1928

Whereas, it is necessary that the land herein described be acquired for the purposes of a public and State park, it is therefore

Resolved, that pursuant to the provisions of Chapter 242 of the laws of 1928 and the other applicable provisions of the laws of the State of New York, the Commissioners of the Palisades Interstate Park enters upon, takes possession of and appropriates, in the name of the People of the State of New York,

All those certain pieces or parcels of land, situate, lying and being at Piermont, in the town of Orangetown, County of Rockland and State of New York, bounded and described as follows:

First Parcel: Beginning at a stake on the south bank of Sparkill Creek said point of beginning being the northwest corner of a plot of 2.87 acres of land formerly owned by Peter H. and Charles Taulman; thence running north 86 degrees 53 minutes east 37.7 feet to the north side of Ferdon Avenue; thence along the north side of Ferdon Avenue, north 66 degrees .08 minutes east 106.7 feet to the west side [fol. 95] of the Road running to Nyack; thence crossing the said Road running to Nyack, north 81 degrees 54 minutes east 110.4 feet; thence north 61 degrees 13 minutes east

129.6 feet to a stake; thence south 24 degrees 09 minutes east 112 feet to a point on the north side of the old Brewery Roadway; thence north 77 degrees 0 minutes east 236.8 feet; thence south 77 degrees 0 minutes east 66 feet; thence south 49 degrees 15 minutes east 66 feet; thence south 26 degrees 0 minutes east 66 feet; thence south 4 degrees 45 minutes east 135.3 feet; thence south 8 degrees 30 minutes east 79.86 feet; thence south 0 degrees 30 minutes west 119.46 feet; thence south 4 degrees 0 minutes east 386 feet; thence south 85 degrees 45 minutes west 52.8 feet; thence south 16 degrees 05 minutes west 304.26 feet; thence south 14 degrees 35 minutes west 382.8 feet; thence south 16 degrees 25 minutes east 138.6 feet; thence south 19 degrees 50 minutes west 130.02 feet; thence south 13 degrees 25 minutes east 102.9 feet; thence south 10 degrees 37 minutes east 233.7 feet; thence south 25 degrees 50 minutes east 436.6 feet; thence south 12 degrees 05 minutes east 420.8 feet; thence south 9 degrees 54 minutes east 204 feet; thence south 14 degrees 58 minutes east 209.2 feet; thence south 14 degrees 59 minutes east 148.7 feet to a cedar stump; thence south 13 degrees 56 minutes east 157.9 feet; thence south 4 degrees 34 minutes east 82.1 feet; thence south 14 degrees 25 minutes east 1,041 feet to a stone monument and the lands of the Standard Oil Company; thence along the lands of the Standard Oil Company, south 73 degrees 30 minutes west 308 feet; thence continuing along said lands, [fol. 96] north 20 degrees 25 minutes west 365.2 feet to a stake and the lands of the Rockland Country Club; thence running along the lands of the Rockland Country Club; north 15 degrees 21 minutes west 194.3 feet to a stone wall; thence along said lands and stone wall, the following courses and distances; north 25 degrees 41 minutes west 131.5 feet; north 17 degrees 11 minutes west 113.9 feet to an iron bolt; north 13 degrees 08 minutes west 326.5 feet to an iron bolt; thence still along said lands, south 82 degrees 28 minutes west 130.6 feet to an iron bolt; south 83 degrees 42 minutes west 126.2 feet to an iron bolt and a stone wall; thence still along said lands and stone wall, south 84 degrees 51 minutes west 240 feet to an iron bolt; south 84 degrees 11 minutes west 317.9 feet to the end of said wall; thence still along said lands, south 84 degrees 23 minutes west 155.4 feet to the

lands now or formerly owned by Swan; thence along the lands now or formerly of Swan, north 6 degrees 40 minutes west 336 feet to the lands now or formerly owned by Chadwick; thence along the lands now or formerly of Chadwick, the following courses and distances; north 84 degrees 59 minutes east 104.3 feet; north 82 degrees 36 minutes east 158.4 feet; north 84 degrees 23 minutes east 356.6 feet; north 83 degrees 58 minutes east 300 feet to a stake and stones; north 82 degrees 55 minutes east 377.5 feet to a stake and stones; north 29 degrees 31 minutes west 191.6 feet; north 28 degrees 14 minutes west 213.5 feet; north 36 degrees 45 minutes west 118 feet; north 26 degrees 13 minutes west [fol. 97] 252.9 feet to an iron bolt; south 55 degrees 24 minutes west 128.8 feet; south 74 degrees 12 minutes west 17.8 feet; south 33 degrees 26 minutes east 99 feet to an iron bolt; south 56 degrees 04 minutes west 788.6 feet to an iron bolt; north 21 degrees 26 minutes west 38.9 feet; north 25 degrees 26 minutes west 283.8 feet to a stake in a small brook, thence still along said lands and a stone wall, south 82 degrees 34 minutes west 111 feet; south 82 degrees 12 minutes west 262.4 feet; south 82 degrees 34 minutes west 274.3 feet; south 83 degrees 13 minutes west 166.4 feet; south 83 degrees 02 minutes west 357.8 feet to an iron bolt on the east side of the Public Road leading to Piermont; thence along the easterly side of said Road, north 20 degrees 41 minutes east 126 feet; north 11 degrees 39 minutes east 190.8 feet; north 3 degrees 29 minutes west 116.5 feet; north 11 degrees 47 minutes west 52.4 feet to the south line of a Reserved lot; thence along the south side of said Reserved lot, north 77 degrees 21 minutes east 193.6 feet; thence north 11 degrees 03 minutes west 46.2 feet to a stone wall; thence along said stone wall, south 77 degrees 21 minutes west 193.8 feet to the east line of said Public Road; thence running along a stone wall and the east line of said Public Road, north 13 degrees 15 minutes west 356.4 feet to the lands now or formerly of Folk; thence running along a stone wall and the lands now or formerly of Folk, the following courses and distances; north 71 degrees 41 minutes east 1,075.6 feet; north 21 degrees 19 minutes west 85.8 feet; north 29 degrees 49 minutes west 82.3 feet to a stone wall; north 28 degrees 15 minutes west 206.3 feet to the [fol. 98] lands now or formerly of Mouquin; thence along

a stone wall and lands now or formerly of Mouquin, north 39 degrees 01 minute east 112.6 feet; north 42 degrees 01 minute east 200.4 feet to another stone wall; thence still along said lands and stone wall, the following courses and distances: north 38 degrees 42 minutes west 21.3 feet; north 36 degrees 56 minutes west 125.3 feet; north 38 degrees 36 minutes west 204.4 feet; north 37 degrees 44 minutes west 125.5 feet to a point in the Public Road leading from the Palisades to Piermont; thence thru the said Road, north 43 degrees 10 minutes east 103.8 feet to a wall in line of lands now or formerly of Lawrence; thence along lands of said Lawrence, south 42 degrees 34 minutes east 55 feet; north 55 degrees 06 minutes east 96 feet; north 44 degrees 57 minutes east 96.8 feet to a stone wall; thence south 47 degrees 09 minutes east 146.9 feet to an iron bolt; thence north 46 degrees 36 minutes east 793.2 feet to a stake; thence north 42 degrees 24 minutes west along lands now or formerly of Jules Mounier, and crossing Ferdon Avenue a distance of 440 feet to the point or place of beginning.
[fol. 99] The said courses, distances, dimensions and boundaries being according to a survey made by E. W. Christie, of Nyack, N. Y. on April 7, 1928.

Second Parcel: The following Salt Meadow lots shown in the Tappan section of the Orangetown Salt Meadow map, made by James S. and James S. Haring, Jr., Surveyors, in October, 1877, a copy of which map is filed in the Town Clerk's office in the town of Orangetown and in the office of [fol. 99] the County Clerk of Rockland County, and also in the Comptroller's office of the State of New York, at Albany, as follows:

A, 1 2, 5, 6, 7, 8, 16, 17, 18, 21, 22, 22A, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 45, 47 and 57.

Some of the said lots being more particularly described as follows:

(a) A lot of Salt meadow, beginning at a stake standing at the ditch near the foot of the hill, at the northwest corner of a salt meadow lot formerly of Gerrit Smith; thence running north 4¼ degrees east 3 chains and 6 links to the end of a small creek called crooked creek; thence along said Creek, southeasterly and southwesterly to a stake in said Creek; thence southwesterly along said Creek to a

stake in said Smith's line; thence north 85 degrees west 5 chains and 85 links to the place of beginning. Containing 1½ acres, more or less bounded north and east by said crooked creek; south by Gerrit Smith and west by the ditch at the foot of the hill.

(b) A lot of salt meadow, beginning at a point at the northwest corner of said lot at a ditch, and runs from thence southerly along the same to a stake and land now or late of Morris Bartow; thence easterly along the land of said Bartow to a stake and land now or late of Jacob Fer-
[fol. 100] don; thence northerly along the land of said Ferdon to the Crum Kill Creek; continuing northerly along said Creek to land now or late of William A. Mabie; thence along the land of said Mabie, to the place of beginning. Containing 2½ acres of land, more or less.

(c) Salt meadow lot known as the mud bend, beginning at a stake near the little Krum Kill, on the line of Dr. Morris Bartow; thence running westerly to the ditch near the mountain; thence along said ditch to a stake on the line of the heirs of Samuel Sneden; thence easterly along said line to the aforesaid Kill; thence along said Kill to the place of beginning. Containing 1 acre more or less, bounded on the north by Dr. Morris Bartow; on the west by the aforesaid ditch; on the south by the land of the heirs of Samuel Sneden, and on the east by the said Krum Kill.

(d) All that certain lot of salt meadow land, situate and being at Piermont, in Orangetown at the Slote Creek; thence south 25½ degrees east 1 chain and 86 links to the salt meadow road; thence north 69 degrees east 3 chains and 45 links; thence north 82¼ degrees east 1 chain; thence south 55 degrees east 1 chain; thence south 36 degrees east 28 links to a ditch; thence north 57 degrees east 2 chains and 58 links to the Slote Creek; thence north 13½ degrees west 2 chains 68 links; thence north 23 degrees west 2 chains; thence north 53 degrees west 60 links; thence south
[fol. 101] 80 degrees west 2 chains and 46 links; thence south 59 degrees west 52 links; thence south 32 degrees west 1 chain and 37 links; thence south 24 degrees west 88 links; thence south 37 degrees west 1 chain and 67 links; thence south 49½ degrees west 1 chain and 93 links to the

place of beginning. Containing 3 acres and 28 hundredths of an acre.

(e) All that certain lot of salt meadow, situate, lying and being at Piermont in Orangetown, County of Rockland and State of New York, bounded and described as follows: Beginning at the ditch by the salt meadow road; thence south 23 degrees east 1 chain and 54 links; thence south 18 degrees east 1 chain and 94 links; thence north 84 degrees east 4 chains and 80 links to a ditch; thence north 10 degrees west 5 chains and 35 links to the Slote Creek; thence south 39 degrees west 1 chain and 59 links; thence south 64¾ degrees west 63 links; thence north 89 degrees west 62 links; thence north 64¾ degrees west 63 links; thence north 89 degrees west 62 links; thence north 64½ degrees west 77 links to a ditch; thence south 57 degrees west 2 chains and 54 links to the place of beginning. Containing 2 acres be the same more or less.

(f) A piece of salt meadow in Orangetown bounded north by heirs of Peter Tallman, dec. easterly by a ditch, southerly by land of Garret Onderdonk, westerly by a road leading around the mountain. Containing 1 acre more or less.

[fol. 102] (g) All that certain lot of salt meadow land, situate, lying and being in the Town of Orangetown, County and State aforesaid, on the east side of the mountain known as Taulman's mountain, bounded and described as follows, viz.: On the west by a ditch adjoining the salt meadow road; south by the Crum Kill; east by meadow lot of James C. Smith, and north by meadow now or late of Tunis A. Smith. Containing 1 acre and ¾ of an acre, more or less.

(h) Salt meadow lot, beginning at southeast corner of said lot at west side of Slote Creek and northeast corner of a lot formerly of Barney N. Huyler now Ferdinand Roth; thence south 85 degrees 15 minutes west 234 feet along said Roth land to a ditch; thence along same north about 150 feet to said Slote Creek; thence along same down stream northwardly, easterly and southerly to Beginning. Containing 1.97 acres more or less. Being the most northerly point or bend in the Tappan salt meadow and lying directly opposite the late residence of Abram Auryansen, deceased.

(i) Salt meadow lot, beginning at a stake standing at the northeast corner of said lot salt meadow on the south side of old Crume Kill being northwest corner of a lot of salt meadow of Eleazor Lord; thence along meadow of said Eleazor Lord about south 29 degrees east about 6 chains 26 links to a stake and meadow formerly owned by [fol. 103] Isaac I. Blauvelt; thence along same about south 54¼ degrees west 1 chain 73 links to a stake and meadow of Tunis Haring; thence along same about North 29 degrees west 6 chains about 50 links to said Crume Kill; thence along said Crume Kill northeast to Beginning. Bounded East by salt meadow of said Eleazor Lord; south by meadow formerly of said Isaac T. Blauvelt; west by meadow of said Tunis Haring; northwest by the Crume Kill. Containing 1.09 acres more or less.

(j) Salt meadow lot, bounded west end 2 chains 38 links by salt meadow of Catherine Onderdonk; South by salt meadow ground of Cornelius J. Smith 7 chains 35 links; east by salt meadow of Dunlap 2 chains 43 links; north by salt meadow of Eleazor Lord 7 chains 87 links; containing 1¾ acres more or less.

(k) Tappan meadow, bounded north by Garret H. Banta, dec. (lot 32) East by Gilbert D. Blauvelt, dec. (lot 36) South by Nancy Vervalen (lot 38) West by Charles B. Wood (lot 31). Being same conveyed by Ellen Decker, Jane Ryerson, Ann Wandle, Francis J. Maxwald, W. H. Wandle, Blanche Wandle and Lizzie A. Wandle, to Elisha Ruckman by deed dated November 9, 1871, containing 1.80 A.

(l) Tappan meadows, bounded North by John W. Ferdon, dec. (lot 39) East by Hudson River; south by John W. Ferdon, dec. (lot 47) West by Francis Bolting (lot 41), [fol. 104] containing 1.04 acres, being or intended to be the same conveyed by Jacob M. Bogert and wife to Elisha Ruckman by deed dated April 29, 1871.

(m) Salt meadow lot, commencing at southeast corner of lot being the southwest corner *of lot being the southwest corner* of land of Berard at a stake; thence north 32 degrees west 1 chain 25 links to a stake; thence south 56 degrees west 8 chains 72 links to bend of ditch; thence along the ditch south 32 degrees east 1 chain 25 links to ditch; thence

north 56 degrees east 8 chains 72 links along land of William Sneden and Tunis Haring to land of Berard and Beginning. Containing 1.09 acres.

(n) Piece or parcel of salt meadow in Orange Salt meadow known and designated on a map of said salt meadow, made by the managers thereof and dated October, 1877, as "lot No. 7" Tappan tract. Bounded east by lots 9 and 10 said Tappan tract. North by lot 6 of said Tappan Tract. South by Creek known as "Kromme Kill" West partly by said Creek and partly by land now or formerly of Charles B. Wood and known as Lot 8 of said Tappan Tract. Being about 1.02 acres more or less.

Together with any land lying in the bed of any road or watercourse (to the center line thereof) adjacent to or traversing the above described premises and any strips or gores of land lying between the tract first hereinabove de-
[fol. 105] scribed and the line formed by the southern and western boundary lines of salt meadow Lot A and the western boundary lines of salt meadow Lots 2, 5, 8, 22A, 21, 28, 29, 31, 45 and 57 above listed.

Together with all the right, title and interest, if any, of the owners of the above described premises in and to the lands under water and the waters and shores abutting the lands in the above described premises.

Resolved, that all descriptions and notices required to be made, filed and served, to carry this resolution into effect, be signed in the name of the Commissioners of the Palisades Interstate Park by the Vice President and attested by the Secretary or Assistant Secretary, and it is further

Resolved, that this resolution be entered in the minutes of this meeting and a copy thereof certified by the Assistant Secretary forwarded to the Governor of the State of New York and his approval obtained.

I, Elbert W. King, Assistant Secretary of the Commissioners of the Palisades Interstate Park, do hereby certify that the foregoing is a true copy of a resolution duly adopted at a meeting of said Commissioners, held in the city of New York, N. Y., on the 9th day of October, 1928, and of the whole thereof; that said resolution was offered by Commissioner Sutro who moved its adoption; that said resolution was seconded by Commissioner Osborn; that

said resolution was adopted unanimously,—a quorum of [fol. 106] the Board of Commissioners of the Palisades Interstate Park being present.

In witness whereof I have hereunto set my hand and affixed the seal of said Commissioners of the Palisades Interstate Park at the City of New York, this 10th day of October, in the year One thousand nine hundred and twenty-eight.

Elbert W. King, Assistant Secretary. (Seal.)

Approval of Governor Smith

Office of the Governor of the State of New York

Pursuant to the provisions of Chapter 242 of the laws of 1928 and of the other applicable provisions of the laws of the State of New York, I, Alfred E. Smith, Governor of the State of New York, do hereby approve of the entry upon, taking possession of and the appropriation of real property within the town of Orangetown, County of Rockland, and State of New York, by the Commissioners of the Palisades Interstate Park, described in a resolution passed by said Commissioners on the 9th day of October, 1928, a copy of which resolution is hereto attached and made a part hereof.

Done at the Capitol, in the City of Albany, New York, this 10th day of October, 1928.

Alfred E. Smith, Governor.

[fol. 107] Description of Land Appropriated and Certificate That Same is Correct

The Commissioners of the Palisades Interstate Park, pursuant to Chapter 242, Laws of 1928, and the other applicable laws of the State of New York, and pursuant to a resolution adopted by said Commissioners on the 9th day of October, 1928, hereby makes an accurate description of the real property entered upon, and appropriated by the said Commissioners with the approval of the Governor of the State of New York for the People of the State of New York, for the purposes of a public and State park, as follows:

(Here followed the description printed supra in the extracts of the minutes of the Commission.)

Commissioners of the Palisades Interstate Park, by Franklin W. Hopkins.

STATE OF NEW YORK,
County of New York, ss:

The Commissioners of the Palisades Interstate Park hereby certify under their official seal that the foregoing description is correct.

Dated New York City, October 10, 1928.

Commissioners of the Palisades Interstate Park, by Franklin W. Hopkins, Vice-President. Attest: George W. Perkins, Secretary. (Seal.)

[fol. 108] Certificate of Secretary of State

STATE OF NEW YORK,
Department of State, ss:

I have compared the preceding copies of approval of the Governor, description of land appropriated and certificate that same is correct and certified copy of resolution adopted by the Commissioners of the Palisades Interstate Park at a meeting held October 9, 1928, in the matter of the appropriation by said Commissioners for the People of the State of New York, of real property at Piermont, town of Orangetown, Rockland County, New York, with the originals thereof on file in this Department, and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the official seal of the Department of State, at the City of Albany, this eleventh day of October, one thousand nine hundred and twenty-eight.

Frank S. Sharp, Deputy Secretary of State. (Seal.)

[fol. 109] Approval of Conservation Commissioner

Office of the Conservation Commissioner of the State of New York

Pursuant to the provisions of Chapter 242 of the laws of 1928 and of the other applicable provisions of the laws of the State of New York, I, Alexander MacDonald, Conserva-

tion Commissioner of the State of New York, do hereby approve of the entry upon, taking possession of and the appropriation of real property within the town of Orangetown, County of Rockland, and State of New York, by the Commissioners of the Palisades Interstate Park, described in a resolution passed by said Commissioners on the 9th day of October, 1928, a copy of which resolution is hereto attached and made a part hereof.

Dated Albany, New York, this 10th day of October, 1928.

Alexander Macdonald, Conservation Commissioner.

(Attached to certified copy of resolution.)

[fol. 110] Certificate of Secretary of State

State of New York, ss:

Department of State

I have compared the preceding copies of approval of the Conservation Commissioner and certified copy of resolution adopted by the Commissioners of the Palisades Interstate Park at a meeting held October 9, 1928, in the matter of the appropriation by said Commissioners for the People of the State of New York, of real property at Piermont, town of Orangetown, Rockland County, New York, with the originals thereof on file in this department, and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the official seal of the Department of State, at the City of Albany, this eleventh day of October, one thousand nine hundred and twenty-eight.

Frank S. Sharp, Deputy Secretary of State. (Seal.)

(This was attached to approval of Conservation Commissioner and certified copy of resolution.)

[fol. 111] Notice

To Sparkill Realty Corporation, Standard Trap Rock Corporation.

Sirs: Please take notice that on October 11, 1928, there was filed in the office of the Secretary of State, at Albany, New York, an accurate description of land, duly certified to be correct, upon which was endorsed a notice that the

property described therein was appropriated by the People of the State of New York for public and State park purposes, pursuant to Chapter 242 of the laws of 1928, and the other applicable laws of the State of New York, with the approval of the Governor.

A duplicate of such description and certificates and notices are hereto annexed and made a part hereof, and are herewith served upon you pursuant to the laws of the State of New York.

Dated New York, October 11, 1928.

Commissioners of the Palisades Interstate Park, by Franklin W. Hopkins, Vice-President.

Attest: Elbert W. King, Assistant Secretary. (Seal.)

[fol. 112] Endorsement

Proposal No. —

Palisades Interstate Park

In the Matter of the Appropriation of Real Property by the People of the State of New York

The Commissioners of the Palisades Interstate Park hereby gives notice and certifies, pursuant to Chapter 242 of the Laws of 1928 and the other applicable Laws of the State of New York, that the real property described herein is appropriated by the People of the State of New York for public and State park purposes with the approval of the Governor.

Dated New York, October 10th, 1928.

Commissioners of the Palisades Interstate Park, by Franklin W. Hopkins, Vice-President. Geo. W. Perkins, Secretary.

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[fol. 113] Exhibit 2 to Affidavit of White

October 18, 1927.

Messrs. Appleton, Rice & Perrin, 59 Wall Street, New York City.

Re Tallman Mountain

Dear Sirs: Your letter of October 14th, together with other data and information furnished us by you or Mr.

Hemmens have been submitted to and considered by the Commissioners of the Palisades Interstate Park, who have requested us to report to you that at their meeting today it was decided and resolved by them that their counsel be instructed to take no steps for the condemnation of the Tallman Mountain property.

The Commissioners would be glad to consider buying the property if it could be secured at a figure which they regard as reasonable, but the valuation placed upon it by your client and the Sparkill Realty Corporation cannot even furnish a basis for negotiation.

We are returning to you herewith the record of test borings made by the Giles Drilling Company, Inc., which you loaned to us, and for which we thank you.

Very truly yours, Augustus L. Richards.

Enc.

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[fol. 114] EXHIBIT 3 TO AFFIDAVIT OF WHITE

October 18, 1927.

Henry J. Hemmens, Esq., 64 Wall Street, New York City.

Re Tallman Mountain

DEAR SIR: Your letter of October 14th, together with other data and information furnished us by you or Messrs. Appleton, Rice & Perrin have been submitted to and considered by the Commissioners of Palisades Interstate Park, who have requested us to report to you that at their meeting today it was decided and resolved by them that their counsel be instructed to take no steps for the condemnation of the Tallman Mountain property.

The Commissioners would be glad to consider buying the property if it could be secured at a figure which they regard as reasonable, but the valuation placed upon it by your client and the Standard Trap Rock Corporation cannot even furnish a basis for negotiation.

Very truly yours, Augustus L. Richards.

[fol. 115] EXHIBIT 4 TO AFFIDAVIT OF WHITE

October 16, 1928.

Messrs. Appleton, Rice & Perrin, 52 Wall Street, New York City.

Attention Mr. Perrin

GENTLEMEN: On behalf of the Commissioners of the Palisades Interstate Park, I wish to inform you that the personal property upon the premises recently appropriated at Taulman Mountain, remains there at the risk of your clients. If you desire to have it remain there for a short time, the Commission has no objection, it being distinctly understood, however, that the Commission has no responsibility therefor.

Major Welch will be ready to cooperate with Mr. Dana or representatives of your corporation in the preparation of the inventory. I shall be glad if you will have your clients get in touch with him.

Yours very truly, Carl S. Stern.

CSS/EB.

c/c to Major W. A. Welch, c/o Palisades Interstate Park, Bear Mountain, N. Y. Commissioners Palisades Interstate Park, 25 Broadway, New York City.

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[fol. 116] IN UNITED STATES DISTRICT COURT

[Title omitted]

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, ss:

Frederick C. Sutro, being duly sworn, says:

I reside at Basking Ridge, New Jersey. I am a member of the Commissioners of the Palisades Interstate Park of the State of New York and of the State of New Jersey, and have been a member of each Commission since 1912. I was treasurer of the New Jersey Commission from 1913. Since 1926 I have been president of the New Jersey Commission succeeding the late Richard V. Lindabury.

I have read the affidavit of J. DuPratt White, verified April 1, 1929, and I concur in the statements therein.

During Mr. White's absence abroad, I kept in close touch with the situation, attended all meetings of both Commis- [fol. 117] sions, and frequently visited the property in question, with which I had been familiar since 1913. I know of my own knowledge that the statements in Mr. White's affidavit as to happenings during the period he was abroad are true.

Frederick C. Sutro.

Sworn to before me this 1st day of April, 1929. J. F. Plaisted, Notary Public, Westchester County. Cert. filed in N. Y. Co. No. 624. Reg. No. 0-17-A. Commission expires March 30th, 1930.

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[fols. 118 & 119] In United States District Court

[Title omitted]

Supplementary Affidavit of J. Du Pratt White in Opposition to Application for Injunction

State of New York,
County of New York, ss:

J. Du Pratt White, being duly sworn, deposes and says:

I am informed that upon the oral argument, plaintiffs' counsel said in substance that he knew of no moneys or other property of the Commission other than the $600,000 allocated under the bond issue. In the brief of plaintiffs served upon us at the argument, there are statements to the effect that the Commission is "limited" to the $600,000 allocated, or "some part thereof" (see e. g., plaintiffs' brief, p. 29).

There is, I am informed, no such allegation in the complaint or in the moving affidavits, and no statement about [fol. 120] this matter appeared in our earlier affidavits in opposition.

In view of the statements upon the argument, I wish to put upon the record that the New York Commission, on October 9, 1928 (when the Commission offered the plaintiffs

$500,000 for the property in suit), and on October 11, 1928 (when the said property was appropriated), had on hand over and above the bond moneys appropriated by L., 1926, Ch. 16, reappropriated by L. 1928, Ch. 75, Part V, and any allocation therefrom—moneys, securities and other properties which could be lawfully used for the acquisition of lands for park purposes in any manner, and which I am informed and believe were of a value in excess of $500,000.

J. Du Pratt White.

Sworn to before me this 17th day of April, 1929.
James D. McCauley, Notary Public, Queens Co.
Cert. filed in N. Y. Co., etc. (Seal.)

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[fol. 121] In United States District Court

[Title omitted]

Motion to Dismiss

Now come J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker and Frederick H. Osborn, constituting the Board of Commissioners of the Palisades Interstate Park, named as defendants in the above entitled action, and move the Court to dismiss the bill of complaint filed herein on or about the 19th day of March, 1929, upon the grounds and reasons as follows:

(1) On the ground that this Court has not jurisdiction of the subject of the action;

(2) On the ground that the said bill of complaint does not state facts sufficient to constitute a cause of action;

[fol. 122] (3) On the ground that the said bill of complaint does not state facts sufficient to constitute a valid cause of action in equity against these defendants.

Please take notice that the aforesaid motion to dismiss the bill of complaint herein will be brought on for hearing before this Court on the 6th day of April, 1929, at ten o'clock in the forenoon of that day, at the room of the Circuit Court of Appeals in the Courthouse, Post Office Build-

ing in the Borough of Manhattan, City and State of New York, and that the undersigned will then and there apply for an order dismissing the said bill of complaint upon the grounds aforesaid and for such other and further relief as to the Court may seem just and proper.

Dated New York, April 1, 1929.

Engelhard, Pollak, Pitcher & Stern, Solicitors for Defendants J. Du Pratt White, Franklin W. Hopkins et al. Walter H. Pollak, Carl S. Stern, of Counsel, 74 Trinity Place, Borough of Manhattan, City of New York.

To Henry J. Hemmens, Esq., Solicitor for Plaintiff Sparkill Realty Corporation, 43 Cedar Street, New York City; Cullen & Dykman, Esqs., Solicitors for Plaintiff Standard Trap Rock Corporation, 177 Montague Street, Brooklyn, N. Y.

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[fol. 123] In United States District Court

[Title omitted]

Motion to Dismiss

Now come Hamilton Ward, as Attorney General of the State of New York, and Alexander MacDonald, as Commissioner of the Conservation Department of the State of New York, named as defendants in the above entitled action, and move the Court to dismiss the bill of complaint filed herein on or about the 19th day of March, 1929, upon the grounds and reasons as follows:

(1) On the ground that this Court has not jurisdiction of the subject of the action;

(2) On the ground that the said bill of complaint does not state facts sufficient to constitute a cause of action;

(3) On the ground that the said bill of complaint does not state facts sufficient to constitute a valid cause of action in equity against these defendants.

[fol. 124] Please take notice that the aforesaid motion to dismiss the bill of complaint herein will be brought on for hearing before this Court on the 6th day of April, 1929, at

ten o'clock in the forenoon of that day, at the room of the Circuit Court of Appeals in the Courthouse, Post Office Building in the Borough of Manhattan, City and State of New York, and that the undersigned will then and there apply for an order dismissing the said bill of complaint upon the grounds aforesaid and for such other and further relief as to the Court may seem just and proper.

Dated New York, April 1, 1929.

James Gibson, Second Assistant Attorney General, Solicitor for Defendants Hamilton Ward, etc., and Alexander MacDonald, etc., The Capitol, City of Albany, State of New York.

To Henry J. Hemmens, Esq., Solicitor for Plaintiff Sparkill Realty Corporation, 43 Cedar Street, New York City; Cullen & Dykman, Esqs., Solicitors for Plaintiff Standard Trap Rock Corporation, 177 Montague Street, Brooklyn, N. Y.

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[fol. 125] In United States District Court, Southern District of New York

Sparkill Realty Corporation and Standard Trap Rock Corporation, Plaintiffs,

against

J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker, and Frederick H. Osborn, Constituting the Board of Commissioners of the Palisades Interstate Park; Hamilton Ward, as Attorney General of the State of New York, and Alexander MacDonald, as Commissioner of the Conservation Department of the State of New York, Defendants

Before Manton, C. J., Goddard and Bryant, D. JJ., Convened Pursuant to Section 380 of the Judicial Code, U. S. Code of Laws

Decree

This cause having come on to be heard under an order to show cause dated March 19, 1929 and having been argued

by counsel and due deliberation had, and the Court being of opinion that the provisions of chapter 242 of the laws of 1928 of the state of New York, if so construed as to vest in defendant, Board of Commissioners of the Palisades Interstate Park, power to acquire lands by entry and appropriation in the manner provided for in section fifty-nine of the conservation law of said state and all acts of defendants pursuant thereto, in the absence of funds separately appropriated by the legislature of said state in such an amount as to be reasonably certain to cover an award which may reasonably be made for said lands, are invalid as violative of the provisions of Section 1, Article XIV of the articles in addition to and amendment of the Constitution of the United States of America and of Section [fol. 126] 6, Article I and Section 4, Article VII of the Constitution of the State of New York, and that no appropriation of funds has been made by the said legislature for said purpose and that plaintiffs are daily suffering great and irreparable loss from the continued unlawful occupation of their property, deterioration of buildings and machinery and impossibility of operation for the redress of which they are without adequate remedy at law, it is

Ordered, adjudged, and decreed as follows:

First. Pending final decree in this action and until the further order of this Court the defendants and each of them and each of their officers, agents, servants and employees, their successors in office and any and every person acting or purporting to act under or by virtue of Chapter 242 of the Laws of 1928 of the state of New York or a certain notice, description or certificate of defendants, Board of Commissioners of Palisades Interstate Park, dated October 11, 1928, with reference to the property hereinafter described be and hereby are enjoined and restrained, jointly and severally, from in any way enforcing or attempting to enforce the provisions of said act, notice, description or certificate against plaintiffs by entry and appropriation as aforesaid or from instituting or prosecuting any action or proceeding at law or in equity by summons, writ, petition, bill or otherwise for the purpose of compelling compliance with or inflicting or recovering any penalty, forfeiture or damage for non-compliance by plaintiffs with said act, no-

tice, description or certificate or from continuing in possession of plaintiffs' said property, being:

All those certain lots or parcels of land situate at Piermont, in the Town of Orangetown, County of Rockland and State of New York, and bounded and described as follows:

[fol. 127] Beginning at the northwest corner of said parcel at the center of the public road leading to Rockland and running thence South 43½ degrees east 455 feet more or less to a stone set in the fence; thence South 39 degrees 15 minutes west 317 feet to land now or formerly of Rodman G. Moulton; thence along the same as the fence now stands South 40 degrees east 38 feet; thence South 32 degrees east 279 feet; thence South 24 degrees east 175 feet more or less to land formerly of James Iserman, deceased; and southeasterly corner of said land of Rodman G. Moulton; thence along said Moulton's land about South 70 degrees west 16 chains 50 links to the center of the public road leading from Piermont to Rockland; thence along the center of said road South 14 degrees east about 5 chains 30 links; thence along said road South 15 degrees east 3 chains and 21 links; thence along said road South 5 degrees west 2 chains and 88 links to a hickory tree; thence along said road South 19 degrees west 1 chain 91 links; thence North 77½ degrees east 18 chains 17 links to a stake on the east side of a small brook; thence South 30½ degrees east 4 chains 30 links to a stone wall; thence South 26½ degrees east 59 links; thence North 55 degrees east 808 feet 6 inches; thence North 20 degrees west 120 feet; thence North 52 degrees east 132 feet; thence South 35 degrees 30 minutes east along the land now or formerly of George A. Jones 904 feet to a cedar tree; thence North 17 degrees west 1,000 feet; thence North 30 degrees west 566 feet to the south side of a spring on land of David Holzworth; thence South 66 degrees west 460 feet; thence North 29 degrees west 90 feet 6 inches to a hickory tree at the northwest corner of said Holzworth's land; thence North 46¾ degrees east 7 chains 5 links; thence North 19 degrees east 1 chain 56 links; thence North 14-¼ degrees east 1 chain 97 links; thence North 22 degrees west 2 chains 10 links; thence North 7 degrees east 5 chains 80 links, thence North 10½ degrees east 4 chains 61 links; thence North 80 degrees east 80 links; thence North 10 degrees west to the

Corner Kill; thence along same easterly, southerly and easterly to a meadow late of James C. Smith; thence along the same North 8-½ degrees west about 10 chains 65 links to a meadow now or late of Tunis A. Smith; thence North 87 degrees east 2 chains 15 links to a ditch; thence North 10½ degrees west 7 chains 15 links to the Sloat Creek; thence South 39 degrees west 1 chain 59 links; thence South 64-¾ degrees west 63 links; thence North 89 degrees west 62 links; thence North 64-½ degrees west 77 links to a ditch; thence North 13-½ degrees west 2 chains and 68 links; thence North 23 degrees west 2 chains; thence North 53 degrees west 60 links; thence South 80 degrees west 2 chains 46 links; thence South 59 degrees west 52 links; thence South 32 degrees west 1 chain 37 links; thence South 24 degrees west 88 links; thence South 37 degrees west 1 chain 67 links; thence South 49-½ degrees west 1 chain 93 links to a stake at the South side of Sloat or Sparkill Creek east of the lowest bridge and at the east side of a mouth or a ditch leading into the said Sparkill; thence South [fol. 128] 69 degrees west along the said Sparkill Creek 5 chains 40 links; thence South 43 degrees east 7 chains 50 links to a stake in a stone heap; thence South 44-¼ degrees west 12 chains 36 links to the westerly line of land now or formerly Charles Taulman's; thence along the westerly line of land last mentioned North 49-¼ degrees west to land now or formerly of William Lawrence; thence South 33 degrees west 1 chain 43 links; thence South 40 degrees west 1 chain 45 links to the school lot; thence along the boundary line of the said school lot to the centre of the public road aforesaid; thence along the centre of said road to the place of beginning. Containing 104 acres and 25/100 of an acre, excepting from the said premises above described a small lot on the Rockland Public road belonging to Maria Briggs; being in dimensions 70 links front and rear by 3 chains 15 links deep.

Also beginning at a stake by the land formerly of Jacob Ackerson and running thence North 25 degrees west 5 chains 35 links to land now or late of James T. Blauvelt, thence North 28 degrees west 6 chains, thence North 17-½ degrees west 5 chains 58 links to a stake on line between lands now or formerly of James A. Hopson and Jacob M. Blauvelt; thence along said line South 78 degrees 45 min-

utes west 815 feet 5-½ inches; thence North 18 degrees 30 minutes west 335 8/10 feet to land now or formerly of George A. Jones; thence North 78 degrees 45 minutes east 1177 feet 5-½ inches to the foot of the hill near the spring; thence in a southeasterly direction to a ditch near the foot of the hill; thence along the said ditch South 19 degrees east to a stake 1 chain 6 links in a northerly direction from the southwesterly corner of a salt meadow lot now or late belonging to the heirs of Lawrence Briggs deceased; and thence in a straight line to the place of beginning. Containing 19 acres and 58/100 of an acre.

Also bounded on the east by land formerly of John L. Brownell, on the South by land now or formerly of Jacob M. Blauvelt, on the west by an old stone ditch and on the north by land now or formerly of George A. Jones, containing about 1⅓ acres.

Also all that certain piece, parcel or tract of land situate on the easterly side of Tallman's Mountain at or near Piermont, New York, in the Town of Orangetown, County of Rockland, and more particularly bounded and described as follows, viz: First: two acres more or less in Piermont, bounded, north, south and west by land of J. S. Homans and east by Elisha Ruckman against which the name of "Mrs. Anna Doersch" appears on the assessment roll of said town for the year 1878, and the name "Mrs. Conrad Doersch" in the tax roll of said town for said years and on which a building known as the Lion Brewery was standing in the year 1878 and Second, one and seven tenths acres more or less at or near Piermont bounded, beginning [fols. 129 & 130] at a hickory tree at the northwest corner thereof, adjoining the land of J. O. Gorham; thence south twenty-five (25) degrees thirty (30) minutes east ninety and one-half (90-½) feet to a chestnut tree at the southwest corner thereof; thence north sixty-five (65) degrees east along said Gorham's land four hundred and sixty (460) feet to the Salt Meadows and other land of said Gorham; thence north twenty-seven (27) degrees forty-five minutes west along the same two hundred and thirty-two (232) feet and thence south forty-seven (47) degrees forty-five (45) minutes west along said Gorham's land four hundred and seventy (470) feet to the point or place of beginning. Against which the name of Anna Doersch appears on the tax roll for the year 1872.

Also the following meadow lots as shown on the map of the Orangetown Salt Meadows, made by James S. and James S. Harring, Jr., Surveyors, in October 1877, a copy of which map is filed in the Town Clerk's office in the town of Orangetown and also in the Comptroller's office in the State of New York, at Albany, as follows:

Lots in the Tappan tract of the Orangetown map; 1, 2, 5, 6, 7, 8, 16, 17, 18, 21, 22, 22a, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 45, 47 and 57.

Second. From doing any acts or things as aforesaid which may in any respect interfere with the ownership or possession of the plaintiffs of the aforesaid property or their free use and enjoyment thereof.

Third. That the defendants' motions to dismiss the bill of complaint in the above entitled cause be and the same hereby are denied.

Dated June 12th, 1929.

Martin T. Manton, C. J. Henry W. Goddard, D. J. Frederick H. Bryant, D. J.

A true copy. Alex Gilchrist, Jr., Clerk. (Seal of District Court of U. S.)

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[fols. 131 & 132] In United States District Court

[Title omitted]

Before Martin T. Manton, Circuit Judge, and Henry W. Goddard and Frederick H. Bryant, District Judges, Convened Pursuant to § 380 of the Judicial Code, U. S. Code of Laws

Suit to restrain the defendants from entry, appropriation and continuance in possession of plaintiffs' property, pur-
[fol. 133] suant to a state statute which is claimed to be in contravention of the State and Federal Constitutions. Injunction granted.

Cullen & Dykman, Esqs., Solicitors for Plaintiff, Standard Trap Rock Corp.; William N. Dykman, Esq., Jackson A. Dykman, Esq., Timothy J. Shea, Esq., of Counsel.

Henry J. Hemmens, Esq., Solicitor for Plaintiff, Sparkill Realty Corp.

Engelhard, Pollak, Pitcher & Stern, Esqs., Solicitors for Defendants, White, Hopkins, Partridge, Perkins, Sutro, Smith, Childs, Harriman, Baker and Osborn sued as constituting the Board of Commissioners of the Palisades Interstate Park.

James W. Gibson, Esq., Second Asst. Attorney General, Solicitor for Hamilton Ward, Attorney General, and Alexander MacDonald, Conservation Commissioner.

Walter H. Pollak, Esq., Carl S. Stern, Esq., G. Frank Dougherty, Esq., on the brief.

OPINION

MANTON, Circuit Judge:

The plaintiff, Sparkill Realty Corporation, owned land at Piermont, Rockland County, New York, upon which there is a stone quarry and which was leased for twenty years with a renewal privilege of twenty years, to the plaintiff, Standard Trap Rock Corporation. The defendants are the Board of Commissioners of the Palisades Interstate [fol. 134] Park, a body politic, created pursuant to Chapter 170 of the Laws of 1900 (New York). This corporate body has the power to sue and be sued and to make and adopt by-laws to regulate its proceedings (Laws, 1928, ch. 242, § 746, Part IX, art. 16 of the Conservation Law of the State). The Attorney General is made a party by virtue of § 68 of the Executive law of the State authorizing his appearance in causes involving the constitutionality of any act of the legislature. The Conservation Commissioner is made a party by virtue of §9 of the Conservation Law which authorizes him to defend actions of this kind.

The commissioners have power to acquire land by condemnation according to a procedure prescribed by chap. 170 of the laws of 1900, but by its provisions they may not acquire title or enter into possession of such land until the amount awarded in a condemnation proceeding in the Supreme Court in the Ninth Judicial District shall have been paid. On June 11, 1927, notice was given to the plaintiffs that a resolution had been adopted by the Board of Commissioners of the Palisades Interstate Park, that preliminary steps be taken toward the acquisition of their property for park purposes. They were notified by letter that the information and valuation filed on October 14, 1927, by the

plaintiffs had been submitted to the Board of Commissioners and that at a meeting of the Board held on October 18, 1927, it had been decided and resolved that its counsel be instructed to take no steps for the condemnation of the property. This letter was acknowledged on October 19, 1927, by the attorneys for the Standard Trap Rock Corporation. The corporation thereupon proceeded with its plans for the development of the quarry which had been [fol. 135] held in abeyance since the notice of June 11, 1927. During the period between October 18, 1927, and October 11, 1928, the plaintiff Standard Trap Rock Corporation erected its plant at a cost of about One million Dollars.

On October 11, 1928, notice was served on the plaintiffs that on that day there had been filed in the office of the Secretary of the State of New York, a description of the land upon which was endorsed a notice that the property had been appropriated for public and state park purposes. Thereupon, the Board of Commissioners entered upon the property and have since remained in possession with a patrolman on guard. This entry was made pursuant to an alleged appropriation and entry under § 761 of the Conservation Law (L., 1928, chap. 242, § 761). A valid exerise of power by the Commissioners under the Act of 1928 would have caused the title of land appropriated to pass from the owner to the people of the State. (§ 59, subdiv. 3 of the Conservation Law; Kahlen vs. State of New York, 223 N. Y., 383.)

Section 761 provides:

"In addition to the various methods of acquiring land provided for in this part of this article, the commissioners of the Palisades Interstate Park shall have the power to acquire lands by entry and appropriation in the manner provided for in section fifty-nine of the Conservation Law."

New York State Constitution (art. 3, § 21) provides that no money shall ever be paid out of the treasury of this state or if its funds, or any of the funds under its management [fol. 136] except in pursuance of an appropriation by law. Chapter 602 of the Laws of 1924 provides for the issuance of bonds of the state not exceeding Fifteen million Dollars, the proceeds of which were to be paid into the treasury and so much thereof as was necessary was appropriated for the development of, improvement and extension of state

parks, including the acquisition of land for that purpose. Section 4 provided in part as follows:

"The moneys for the development, improvement and extension of the Palisades Interstate Park shall be expended and the lands shall be acquired by the commissioners of the Palisades Interstate Park under the provisions of chapter one hundred and seventy of the laws of nineteen hundred, as amended."

Under the Laws of 1900 chap. 170, § 5 (§ 748 of the Conservation Law), it is provided that the commissioners "shall have power to take in fee or otherwise, by purchase, gift, devise or eminent domain," lands situated near the park. The procedure necessary to acquire lands by eminent domain is stated. A map of the lands to be acquired must be filed with the clerk of the county in which the lands are situated (§ 749). A notice of intention to take the lands must be published (§ 750). The Supreme Court in the Ninth Judicial District shall then appoint three (3) disinterested persons, freeholders and residents of the state, commissioners and appraisers (§ 751). The commissioners meet and pass upon the claims of the owners of the lands (§ 752). The report of the commissioners is filed in the county clerk's office and subject to revision or [fol. 137] confirmation by the Supreme Court (§§ 753, 754).

By § 759 of the Conservation Laws (L., 1900, ch. 170, § 16), the state may not acquire the title to or re-enter the possesson of the lands until the amount awarded is paid to the owners or the county clerk. Assuming that the moneys appropriated by chap. 602 of the Laws of 1924 were reappropriated by chap. 75, Part V of the Laws of 1928, the commissioners cannot use them except in the manner specified by the original appropriation law, that is, "the moneys shall be expended and the land shall be acquired under the provisions of chap. 170 of the laws of 1900 as amended." there was never an appropriation of money for "entry and appropriation." There has been an appropriation for payment in condemnation. If this be true, the entry and appropriation of the land in question was illegal. (Pauchogue vs. L. I. State Park Comm., 243 N. Y., 15.)

The plaintiff Sparkill Realty Corporation has, by affidavit, fixed the value of its property at Three million Dol-

lars. The Standard Trap Rock Corporation must pay as a minimum, Thirty-five thousand Dollars per year, the lease being fixed at 7¢ per cubic yard up to 500,000 yards and for production in excess a royalty of 6¢ per cubic yard up to 600,000 cubic yards and a royalty of 5¢ per cubic yard on all above. It is asserted by the Sparkill Realty Corporation that the income by reason of this lease was approxmately Eighty thousand Dollars annually. There are estimates which fix the value of the buildings and machinery installed for the crushing plant at One Million Dollars and that the income to be derived therefrom by the Standard Trap Rock Corporation would approximate over Five hundred thousand Dollars per year. Affidavits place the valu- [fol. 138] ation of the property, together with the quarry and plant at Four million Dollars. Opposed to this, is the affidavit of one of the commissioners who placed a valuation on the property on October 14, 1927, stating that it was unimproved and assessed for taxing purposes at $15,000. The property consists of 113 acres of upland and 57½ acres of marsh land. Commissioner White swears: "The Commissioners, at the time of the appropriation, came to the conclusion relying upon the experience of the Commission in connection with the acquisition of numerous properties including quarries, the advice of their staff and of other technical experts and the data and reports in their possession that the property was worth less than $600,000, and that the obligation of the State would not exceed that sum."

The jurisdiction of this court is invoked upon the claim that the plaintiffs' property is being taken without due process in violation of the 14th amendment of the Federal Constitution. That no certain and adequate method of making compensation to the plaintiffs is shown because the statute under which the entry and appropriation was made relegates the plaintiffs to the Court of Claims of the State, but fails to appropriate money to pay for the property. Also that it does not sufficiently pledge the credit of the State; even though the Court of Claims of the state be fully vested by the statute with jurisdiction to determine the amount of compensation, there is no appropriation by the legislature of such an amount as to be reasonably certain to cover an award that may reasonably be made. (Rockaway Pacific Corp. vs. Stotesbury, 255 Fed., 345.)

[fol. 139] The statute creating the commission of the Palisades Interstate Park (chap. 170 of the Laws of 1900) authorizes the acquisition of real estate by condemnation only. Chap. 602 of the Laws of 1924 which was approved by a vote of the People of the State, provided for the issuance of bonds and that compensation for the land acquired out of their proceeds by the Board must be ascertained and the land acquired by condemnation. Chapter 16 of the Laws of 1926 made specific appropriations for the acquisition of lands by condemnation proceedings, as provided in the Laws of 1900, and allocated to the Palisades Interstate Park $3,500,000 from the sale of bonds authorized by the Law of 1924. The Conservation Law of 1928 reorganizing this defendant Board of Commissioners, repealed the Laws of 1900, chap. 170, but re-enacted all the provisions of that act governing the acquisition of land by condemnation. Section 80 of the General Construction Law of the State provides:

"If any provision of law be repealed and, in substance, reenacted, a reference in any law to such repealed provision shall be deemed a reference to such reenacted provision."

Therefore, pursuant to chap. 242 of the Laws of 1928, land may be acquired only under the sections of the Law of 1900 if payment is to be made from funds appropriated by chap. 16 of the Laws of 1926. Section 761 of the Conservation Law gives the Commission additional power to acquire land by entry and appropriation in the manner provided for in §59 of the Conservation Law and §59, sub. sec. 3 provides that from the time of the service of notice of filing description and certificate on the owners of the land [fol. 140] appropriated, the entry and appropriation shall be deemed complete and thereupon such property shall become and be the property of the people of the state. Thus there is a distinction between taking the land by entering and appropriation under §59 of the Conservation Law and by condemnation proceedings as provided by Chap. 170 of the Laws of 1900. This is not merely a technical matter of procedure. Substantial rights are affected by entry and appropriation for it divests the owners of title the moment notice of appropriation is served and in this instance, the compensation, when that was done, was limited to some part

of $600,000 which was allocated to the Palisades Interstate Park. If the land was condemned, the owner would have full ownership and hold the fee until the land was fully compensated for. Moreover, under chap. 242 of the Laws of 1928, which re-enacted chap. 170 of the Laws of 1900, it was necessary to complete the condemnation proceedings within eighteen months after the first publication and notice of application to condemn which, in effect, limited the time of payment, and the section required a report to the legislature of the amount awarded an owner so that appropriation might be made, if not already available. The approval of the people given in 1924 (§4, chap. 602 of the Laws of 1924) provided:

"The moneys for the development, improvement and extension of the Palisades Interstate Park shall be expended and the land shall be acquired by the Commissioners of Palisades Interstate Park under the provision of Chapter 170 of the Laws of 1900 as amended. * * *"

[fol. 141] Parks other than the Palisades Interstate Park including the Long Island parks are dealt with in §4, and it states:

"Except as in this section otherwise provided such lands may be acquired in such manner as the legislature may provide, which may be either by purchase, by condemnation, or by entry and appropriation with submission to the court of claims or supreme court for the determination and award of damages for such entry and appropriation, or by one or more of such methods as the legislature may provide."

This exception indicates the restriction upon the commissioners, giving the power of entry and appropriation in the case of parks and parkway extensions other than the Palisades Interstate Park, and this involved an assurance to the owners of the land by making payment of compensation a pre-requisite of vesting of title in the state. It also protected the people against a floating debt. The intent of the legislature to preserve such protection intact is very clear from the language of the act making the appropriation of moneys for state park purposes on the authority of which the defendants have acted (Chap. 16 of the Laws of 1926). A special provision is made for the expenditure

of moneys and acquisition of lands by the commissioners of the Palisades Interstate Park by the laws under which and according to which they are directed to act. The Legislature of 1928, enacting §761 of the Conservation Law, attempted to dispense with the provisions of the Laws of 1900 (ch. 170), and apparently disregarded the prohibitory provisions of §4, chap. 602 of the Laws of 1924 (§2, subdiv. 2 of [fol. 142] chap. 16 of the Laws of 1926) and vested the commissioners with power to acquire land by entry and appropriation with money appropriated by those acts. This was inconsistent with prior legislation and contrary to the approval of the people by vote in the election of 1924. The authorization of the people to the Interstate Park Commissioners was to expend the moneys appropriated for the acquisition of lands for park purposes in the manner specified in chap. 170 of the Laws of 1900. The commissioners were thus limited. In the absence of authority by the vote of the people, no such change can be made in a referendum act which would permit the use or expenditure of moneys provided for by such act for any other purpose or in any different manner than that specially stated in the referendum act, for it is there the will of the people is expressed and their affirmative vote thereon must control the expenditure of the money and the later legislative enactments cannot change or modify the basic requirements in the particular law save by §4, art. 7 of the Constitution. (Half Moon Bridge Co. vs. Canal Bd., 91 Misc., 600.)

The Laws of 1928 (chap. 242) prescribing a new manner of acquisition of land by the commissioners, was in direct conflict with the referendum act and of no force or effect in the absence of funds separately appropriated, and the Palisades Park Commissioners had no power to acquire, by entry or appropriation, lands which must be paid for out of the bonds appropriated by the referendum of 1924. The board attempted to procure an allocation of $600,000 for the acquisition of lands in the Towns of Orangetown and Clarkstown without any division between the two and attempted to set it aside out of the sum appropriated by chap- [fol. 143] ter 16 of the Laws of 1926, but no part of it has been paid to the plaintiffs and the allocation itself was not made within two years next after the passage of the appropriation act of 1926. This reappropriation failed to be

made within the requirements of §21 of art. 3 of the State Constitution and no payments having been made within two years next after the passage of chap. 16 of the Laws of 1926 which became a law February 24, 1926, the entry upon and the appropriation of the plaintiffs' lands by the commissioners is unlawful because no proper provision was made for a convenient and adequate source and means of payment of compensation for the lands so appropriated. This taking of property was contrary to the Fourteenth Amendment as well as the State Constitution (art. 1, §6) for it was taking private property for public use without just compensation or making provision therefor. Section 50 of the Conservation Law (found in art. 3 entitled Divisions of Land and Forests) defines the powers and duties and procedure for carrying out the provisions of Art. 3. That section gives the power to the conservation department to establish, acquire control and manage state parks outside of the several reserves, parks and other state lands described in the article and "to acquire lands for such purposes when moneys have been appropriated therefor." Under subdiv. 7 of §59, the owner is relegated to presentation of a claim in the Court of Claims and money must be appropriated for payment. And art. III of the Constitution of the State forbids payment out of the treasury of the state of any of its funds or any of the funds under its management, except in pursuance of an appropriation by law. It is not enough for the owner of land taken by entry under §59 to present a [fol. 144] claim thereunder in the Court of Claims unless there has been an appropriation for its payment. An award of the Court of Claims without an appropriation creates no right to payment out of the treasury.

Chapter 170 of the Laws of 1900 or the alternative procedure provided in §§747 and 760 of the Conservation Law, by the provisions of which title does not pass until the award has been paid, violates no constitutional rights, whereas §59 of the Conservation Law does, for under it entry and service by notice vests title in the people without an appropriation therefor. Therefore, the plaintiffs are without remedy. There is no impartial tribunal where their claims can be adjusted. Such taking is illegal and void as violative of the Fourteenth Amendment, §1 of the Constitution of the United States. Adirondack R. R. Co.

vs. N. Y. State, 176 U. S. 335; Backus vs. Union Depot Co., 169 U. S., 557; Sweet vs. Rechel, 159 U. S., 380.

It is not enough to say that $600,000 has been allocated for the acquisition of plaintiffs' land pursuant to the provisions of sub. sec. 2, §1, chap. 16 of the laws of 1926, reappropriated chap. 75, Part V of the Laws of 1928. Indeed, the alleged appropriation seems to comprise lands to be taken in the towns of Clarkestown and Orangetown, whereas plaintiffs' property is situated entirely in the town of Orangetown. But if sufficiently appropriated, it is entirely insufficient in amount. Since money was not provided to pay an award therefor, the statute is in conflict with the 14th Amendment (Rockaway Pacific Corp. vs. Stotesbury, 255 Fed., 345; Pauchogue vs. L. I. State Park Comm., 243 N. Y., 15). In the interval between the first (243 N. Y., 15) and the second (248 N. Y., 635) considera- [fol. 145] tions of the Pauchogue case, there was a gift to the state of $250,000 with interest to pay for the land there taken and another entry and appropriation was made thereafter under the claim that the $250,000 was sufficient to pay for the property taken.

The contention that the State is a necessary party is without force (See Hopkins vs. Clemson College, 221 U. S., 636; Pennoyer vs. McConnaughy, 140 U. S., 1).

The defendants refer to Belknap vs. Schild, 161 U. S., 10, and Crozier vs. Krupp, 224 U. S., 290, urging that within these decisions there was a pledge of the faith and credit of the state and this was sufficient provision for just compensation. These cases were bills in equity to restrain infringement of plaintiffs' patents on devices used in the national defense. Schild's suit was brought against the commanding officer of the navy yard, a civil engineer in the navy, an assistant naval constructor, and an employee of the yard, for an accounting and injunction against the future use of the caisson gate which was already a part of a dry dock and alleged to contain an improvement patented by the plaintiff, and for the destruction of the gate or its delivery to the plaintiff. It had been manufactured by the officers of the United States out of materials belonging to it. The court speaks of the property as already in the possession of the United States describing an article manufactured by officers and employees out of materials and upon

property belonging to the United States. In the Crozier case, the bill of complaint alleged that the plaintiff owned the patent for improvement in recoil-brake apparatus for guns used by the government in its ordnance department and the defendant was the chief of ordnance of the United [fol. 146] States army. The court referred to the "intangible nature—patent rights—of the property taken, the great possibilities in the essential operations of government that such rights may be invaded by incorporating them into property of a public character, of the vital public interest involved in the subject-matter of the patents in question and the grave detriment to the very existence of government which might result from interference with the right of the Government to make and use instrumentalities of the character of those with which the patents in question are concerned" and concluded that the pledge of good faith of the government which the statute plainly implied to appropriate for and pay compensation when ascertained, was undoubtedly a full and adequate provision for the exercise of the power of eminent domain which was provided by the statute. The court confined discussion to the particular case before it. These cases are not applicable here where the Commission has elected to proceed under a statute which cannot constitutionally be invoked in the absence of an appropriation and therefore furnishes no protection and warrants an injunction.

It is no answer to say that by such entry and appropriation title was forced on the state. The possession was unlawful.

Nor is the action one for ejectment (Hopkins vs. Clemson College, 221 U. S., 636; U. S. Freehold Land Co. vs. Gallegos, 89 Fed., 769).

There is not a sufficient pledge of the general credit of the state by reason of the provision of §59 of the Conservation Law which provides that the amount of the claim shall be paid out of the state treasury (Pauchogue Land Corp. vs. L. I. State Park Comm., 243 N. Y., 15; Newell vs. People, 7 N. Y., 9, 106). Nothing in this section attempted to create [fol. 147] a duty on the part of the comptroller to issue his warrant, or the state treasurer to honor the same, in the absence of an appropriation by the legislature. Payment would be contrary to the state constitution. Sub. div. 7 of

§59 adds nothing by way of a pledge of faith and credit (Sage vs. City of Brooklyn, 89 N. Y., 190).

In Hays vs. Port of Seattle, 251 U. S., 233, no land of the plaintiff was taken in the proceeding, the only question being whether by the obligation of his contract, he be held for the excavation of the waterway which was impaired in violation of §10 of art. 1 of the constitution. The Supreme Court held that at most there was a breach of contract for which he might be remitted to an action for damages under the Washington Code. In Joslin Co. vs. Providence, 262 U. S., 668, the municipality was forced to acquire land by condemnation and there was "an additional guaranty that the judgment obtained will be paid—and paid promptly—the owner under the statute may have execution issued against the city." In Bragg vs. Weaver, 251 U. S., 57, it was conceded that the taking was under the direction of public officers for public use and that there was an adequate provision for payment of such compensation as may be awarded. In Backus vs. Ford Union Depot Co., 169 U. S., 557, the property was taken under a statute entitling the authorities to entry and possession on payment or deposit of the sum fixed by the commissioners or a jury to be paid as compensation for such land. Kahlin vs. State of New York, 223 N. Y., 383, announced the doctrine that private property may not be taken for public use, for there is an absolute right of the owner to just compensation and provis-
[fol. 148] ion must be made for prompt determination and payment of such compensation from the public funds.

The injunction will therefore issue.

Dated June 7, 1929.

Martin T. Manton, Circuit Judge. Henry W. Goddard, District Judge. Frederick H. Bryant, District Judge.

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[fol. 149] In United States District Court

[Title omitted]

Petition for Appeal and Order Allowing Same

The above named defendants, feeling aggrieved by the decree of interlocutory injunction entered in the above en-

titled cause on June 21st, 1929, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith, and they pray that the appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record of the proceedings and papers upon which the said decree was based, duly authenticated, be sent to the Supreme Court of the United States;

And your petitioners further pray that the proper order relating to the security, if any, to be required of them be made.

Dated New York, July 22nd, 1929.

Engelhard, Pollak, Pitcher & Stern, Solicitors for J. du Pratt White, Franklin H. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. [fol. 150] Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker, and Frederick H. Osborn, Constituting the Board of Commissioners of the Palisades Interstate Park. James Gibson, Second Assistant Attorney General, Solicitor for Hamilton Ward, as Attorney General of the State of New York, and Alexander MacDonald, as Commissioner of the Conservation Department of the State of New York.

Appeal as prayed for is hereby allowed.

Dated July 22nd, 1929.

Martin T. Manton, U. S. Circuit Judge.

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[fol. 151] In United States District Court

[Title omitted]

Prayer for Reversal

Assignment of Errors

Now come the defendants in the above entitled cause and each of them and file the following assignment of errors, upon which they will rely upon their prosecution of the appeal in the above entitled cause from the decree of inter-

locutory injunction entered in this Court on the 21st day of June, 1929:

1. The Court erred in taking jurisdiction of this cause.

2. The Court erred in not dismissing the bill of complaint on the ground that it does not present a substantial federal question.

3. The Court erred in overruling the motion interposed by the defendants and appellants to dismiss the bill of complaint herein on the ground that the Court was without jurisdiction of the subject of the action.

[fol. 152] 4. The Court erred in not dismissing the bill of complaint on the ground that the suit is in reality against the State of New York and with respect to property in its possession, and that the State has not given its consent to be sued.

5. The Court erred in holding that this action is not essentially an action for ejectment.

6. The Court erred in not dismissing the bill of complaint on the ground that it fails to show any ground of equitable jurisdiction.

7. The Court erred in denying the motion of the defendants and appellants to dismiss the bill of complaint on the ground that the said bill of complaint does not state facts sufficient to constitute a cause of action in equity against these defendants.

8. The Court erred in holding that the provisions of Section 761 of the New York Conservation Law (Ch. 242, Laws of 1928), if so construed as to vest in the Board of Commissioners of the Palisades Interstate Park power to acquire lands by entry and appropriation in the manner provided for by Section 59 of the New York Conservation Law, in the absence of funds separately appropriated by the Legislature of the State of New York in such an amount as to be reasonably certain to cover any award which may reasonably be made for said lands, is invalid as violative of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

9. The Court erred in holding that the provisions of Section 761 of the New York Conservation Law (Ch. 242, Laws of 1928), if so construed as to vest in the Board of Com- [fol. 153] missioners of the Palisades Interstate Park power to acquire lands by entry and appropriation in the manner provided for by Section 59 of the New York Conservation Law, in the absence of funds separately appropriated by the Legislature of the State of New York in such an amount as to be reasonably certain to cover any award which may reasonably be made for said lands, is invalid as violative of Section 6 of Article I of the Constitution of the State of New York.

10. The Court erred in holding that the provisions of Section 761 of the New York Conservation Law (Ch. 242, Laws of 1928), if so construed as to vest in the Board of Commissioners of the Palisades Interstate Park power to acquire lands by entry and appropriation in the manner provided for by Section 59 of the New York Conservation Law, in the absence of funds separately appropriated by the Legislature of the State of New York in such an amount as to be reasonably certain to cover any award which may reasonably be made for said lands, is invalid as violative of Section 4 of Article VII of the Constitution of the State of New York.

11. The Court erred in holding that Section 59 of the New York Conservation Law violates constitutional rights.

12. The Court erred in holding that the taking of property pursuant to Sections 59 and 761 of the New York Conservation Law is illegal and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

13. The Court erred in holding that at the time of the entry [fol. 154] upon and appropriation of plaintiffs' property there were no funds in the State Treasury out of which a judgment recovered by the plaintiffs in the Court of Claims could be lawfully satisfied.

14. The Court erred in holding that there never was an appropriation of money for the acquis-tion of lands by en-

try and appropriation by the Board of Commissioners of the Palisades Interstate Park.

15. The Court erred in holding that Section 761 of the New York Conservation Law (Ch. 242, Laws of 1928) was in conflict with the provisions of Chapter 602 of the Laws of 1924.

16. The Court erred in holding that Section 761 of the New York Conservation Law (Ch. 242, Laws of 1928) was inconsistent with prior legislation and contrary to the vote of the people approving Chapter 602, Laws of 1924, in that it purported to vest the Commissioners of the Palisades Interstate Park with the power to acquire land by entry and appropriation with money derived from the bond issue authorized by Chapter 602, Laws of 1924 and appropriated for the use of the Commissioners of the Palisades Interstate Park by Chapter 16, Laws of 1926.

17. The Court erred in holding that by reason of the provisions of Article VII, Section 4 of the New York Constitution, monies derived from the bond issue authorized by Chapter 602 of the Laws of 1924, approved by the People, could not be lawfully appropriated to pay for lands taken by the Palisades Park Commission by entry and appropriation in accordance with the provisions of Sections 59 and 761 of the New York Conservation Law.

[fol. 155] 18. The Court erred in holding that by reason of the requirements of Article III, Section 21 of the Constitution of the State of New York, the money appropriated by Chapter 16 of the Laws of 1926 for the use of the Board of Commissioners of the Palisades Interstate Park was not validly reappropriated by Chapter 75 of the Laws of 1928.

19. The Court erred in holding that the obligation of the State or the amount payable out of the State Treasury upon an award by the Court of Claims is in any way limited by the allocation of monies to the Palisades Interstate Park Commission made or on about September 29, 1928, or by the amount of said allocation.

20. The Court erred in holding that the compensation that plaintiffs can recover in the Court of Claims is limited to some part of the sum of $600,000 allocated to the Pal-

isades Interstate Park Commission on or about September 29, 1928, and erred in holding that the compensation recoverable by the plaintiffs is limited by the said allocation in any way.

21. The Court erred in holding that Article III, Section 21 of the Constitution of the State of New York imposes any limitation upon the duty or the power of the Legislature to make an appropriation for the payment of an award rendered by the Court of Claims of the State.

22. The Court erred in holding that the taking of land for public park purposes in accordance with the provisions of Section 59 and Section 761 of the New York Conservation Law does not pledge the credit of the State of New York for the payment of just compensation to the owner of such land, except to the amount of funds in the State [fol. 156] Treasury previously appropriated and available to pay for such land at the time of the entry and appropriation.

23. The Court erred in holding that an award of the Court of Claims of the State of New York without an appropriation creates no right to payment out of the Treasury of the State.

24. The Court erred in holding that there is not a sufficient pledge of the general credit of the State by reason of the provision of Sub-division 7 of Section 59 of the New York Conservation Law that the amount of the judgment recovered in the Court of Claims by the owner of land taken by entry and appropriation shall be paid out of the State Treasury.

25. The Court erred in holding that plaintiffs are without remedy for the recovery of the value of the land appropriated and in holding that there is no impartial tribunal where plaintiffs' claim for such value can be determined.

26. The Court erred in holding that plaintiffs have any standing to challenge the availability, for the payment of awards rendered by the Court of Claims for lands taken by entry and appropriation under Sections 59 and 761 of the Conservation Law, of money appropriated to the use of the Palisades Interstate Park Commission by Chapter

16 of the Laws of 1926, and reappropriated by Chapter 75 of the Laws of 1928.

27. The Court erred in holding that plaintiffs have any standing to attack the validity of the reappropriation for the State Park System, including the Palisades Interstate [fol. 157] Park, made by Chapter 75 of the Laws of 1928.

28. The Court erred in holding that the entry upon and appropriation of plaintiffs' land in accordance with the provisions of Sections 59 and 761 of the New York Conservation Law was invalid, and did not operate to divest the plaintiffs of title to the said property, and did not operate to vest title in the People of the State.

29. The Court erred in holding that, in the absence of a separate appropriation by the New York Legislature in such an amount as to be reasonably certain to cover any award that may be reasonably made to plaintiffs in the Court of Claims, the entry upon and appropriation of plaintiffs' property was invalid.

30. The Court erred in holding that the appropriation of plaintiffs' property was invalid under the due process clause of the Fourteenth Amendment of the Constitution of the United States and in holding that it was invalid under Article I, Section 6 of the Constitution of the State of New York, and in holding that it was invalid under Article VII, Section 4 of the Constitution of the State of New York, and in holding that the said property did not, pursuant to the entry and appropriation proceedings, become the property of the People of the State of New York.

31. The Court erred in holding, in advance of the final hearing and determination of this action, that the fair value in eminent domain of the property appropriated was in excess of $500,000.

32. The Court erred in holding that it is asserted by the Sparkill Realty Corporation that its income, by reason of its lease to the Standard Trap Rock Corporation, was [fol. 158] approximately $80,000 annually.

33. The Court erred in granting a temporary injunction in the absence of a showing that the Palisades Park Commission was without funds outside of money derived from

the bond issue authorized by Chapter 602 of the Laws of 1924, and in the face of uncontradicted proof that the said Commission had monies, securities and other properties of a value of not less than one-half a million dollars, outside of the bond monies, available for use in the acquisition of lands for park purposes.

34. The Court erred in enjoining the defendants from continuing in possession of the property in suit, pending the final hearing and determination of this cause.

35. The Court erred in enjoining defendants, pending the final hearing and determination of this cause, from doing any acts or things which might interfere with the ownership or possession by the plaintiffs of the aforesaid property or with the free use and enjoyment thereof by the plaintiffs.

36. The Court erred in failing to maintain the status quo pending the final hearing and determination of this cause.

37. The Court erred in granting pendente lite the final relief demanded by the bill of complaint.

38. The Court erred in granting the decree of interlocutory injunction.

Wherefore said defendants-appellants pray that the said [fol. 159] decree be reversed and the cause remanded, and for such other and further relief in the premises as may be in accordance with law.

Dated New York, July 22, 1929.

Engelhard, Pollak, Pitcher & Stern, Solicitors for Defendants White, Hopkins, Partridge, Perkins, Sutro, Smith, Childs, Harriman, Baker, and Osborn, sued as constituting the Board of Commissioners of the Palisades Interstate Park. James Gibson, Second Asst. Attorney General, Solicitor for Hamilton Ward, Attorney General, and Alexander MacDonald, Conservation Commissioner.

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[fol. 160] Bond on appeal for $500.00, approved July 22, 1929, omitted in printing.

[fol. 161] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that the foregoing are true and correct copies of all the papers upon which the Court acted in making the order appealed from herein and the whole thereof, now on file in the office of the Clerk of the District Court of the Southern District of New York, said papers being the following:

1. Citation on Appeal and Affidavits of Service.
2. Order to Show Cause on Application for Interlocutory Injunction.
3. Bill of Complaint, and Exhibits.
4. Affidavits submitted in support of application for Interlocutory Injunction.
   a. Affidavit of James G. Shaw.
   b. Affidavit of Ellis C. Soper.
   c. Affidavit of Frank T. Gucker.
   d. Affidavit of Arthur S. Lane.
   e. Affidavit of William E. Keine.

[fol. 162] f. Affidavit of Edward W. Christie.

   g. Affidavit of Jackson A. Dykman.
5. Affidavits submitted in opposition to application for interlocutory injunction.
   a. Affidavit of J. Du Pratt White and Exhibits.
   b. Affidavit of Frederick C. Sutro.
   c. Supplementary Affidavit of J. Du Pratt White.
6. Motion of defendants J. Du Pratt White, et al., to dismiss Bill of Complaint.
7. Motion of defendants, Hamilton Ward and Alexander MacDonald to dismiss Bill of Complaint.
8. Order granting interlocutory injunction and denying motion to dismiss.
9. Opinion, Manton, C. J., Goddard, D. J., Bryant, D. J.
10. Petition for appeal and order allowing appeal.
11. Assignment of Errors and prayer for reversal.

12. Bond on appeal.

Dated New York, August 19, 1929.

Henry J. Hemmens, Solicitors for Plaintiff Sparkill Realty Corporation. Cullen & Dykman, by Jackson A. Dykman, Solicitors for Plaintiff Standard Trap Rock Corporation. Engelhard, Pollak, Pitcher & Stern, Solicitors for Defendants White, Hopkins, Partridge, Perkins, Sutro, Smith, Childs, Harriman, Baker and Osborn, sued as constituting the Board of Commissioners of Palisades Interstate Park. James Gibson, Solicitor for Defendants Ward and MacDonald.

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[fol. 163] In United States District Court

[Title omitted]

Stipulation re Transcript of Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated New York, August 19, 1929.

Henry J. Hemmens, Solicitors for Plaintiff Sparkill Realty Corporation. Cullen & Dykman, by Jackson A. Dykman, Solicitors for Plaintiff Standard Trap Rock Corporation. Engelhard, Pollak, Pitcher & Stern, Solicitors for Defendants White, Hopkins, Partridge, Perkins, Sutro, Smith, Childs, Harriman, Baker and Osborn, sued as constituting the Board of Commissioners of Palisades Interstate Park. James Gibson, Solicitor for Defendants Ward and MacDonald.

[fol. 164] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 165] Supreme Court of the United States

Statement of Points to be Relied upon and Designation of the Parts of the Record to be Printed—Filed Aug. 21, 1929

Appellants hereby adopt their assignment of errors, (appearing at page 151 of the record herein) as their statement

of points to be relied upon, and represent that the whole of the record as set forth in the stipulation herein, and as filed, is necessary for the consideration of the case, as required by Paragraph 9 of Rule 13 of the rules of the Su-
[fols. 166 & 167] preme Court of the United States.

Dated New York, August 16th, 1929.

J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker, and Frederick H. Osborn, Constituting the Board of Commissioners of the Palisades Interstate Park; Hamilton Ward, as Attorney General of the State of New York, and Alexander MacDonald, as Commissioner of the Conservation Department of the State of New York, Appellants. Walter H. Pollak, Counsel for Appellants. Engelhard, Pollak, Pitcher & Stern, Solicitors for Appellants J. Du Pratt White et al. James Gibson, Second Assistant Attorney General of the State of New York, Solicitor for Appellants Ward and MacDonald.

Service of the foregoing is acknowledged on the 19″ day of August, 1929.

The foregoing comprehending the entire record, Appellees hereby waive additions to the record, and consider necessary for the consideration of the case printing the entire record as above represented by Appellants.

Cullen & Dykman, by Jackson A. Dykman, Solicitors for Appellee Standard Trap Rock Corporation. Henry J. Hemmens, Solicitor for Appellee Sparkill Realty Corporation.

[fol. 168] [File endorsement omitted.]

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Endorsed on cover: File No. 34,467. S. New York D. C. U. S. Term No. 336. J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, et al., appellants, vs. Sparkill Realty Corporation and Standard Trap Rock Corporation. Filed August 21st, 1929. File No. 34,467.